BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 20, 1998

IN RE:	UNIVERSAL SERVICE PROCEEDING)	DOCKET NO. 97-00888	
	INTERIM ORDER ON I	PHASE I OF U	NIVERSAL SERVICE	

H. Lynn Greer, Jr. Chairman

> Sara Kyle Director

Melvin J. Malone Director

Table of Contents

SECTION					
I.	Background	1			
11.	Parties to the Proceeding3				
III.	Executive Summary4				
IV.	Specific Findin	gs of Fact and Conclusions of Law10			
	Issue 1	Services are to be Supported by a Tennessee Universal Service Support System			
	Issues 2 & 3	Eligible Telecommunications Carriers will be able to Provide All Elements of Universal Service14			
	Issue 4	Carrier of Last Resort20			
	Issue 5	Service Areas for ETCs22			
	Issue 6	Contributors to the Tennessee Intrastate Universal Service Fund			
	Issue 7	Affordability of Rates29			
	Issue 8	Implicit and Explicit Subsidies32			
	Issue 9	Revenue Benchmark and Preliminary Cost Modeling Issues35			
	Issue 10	How should the TRA Determine the Basis for Support for "Low Income Consumers"?43			
	Issue 11	What Support in Addition to the Federal Support Already Adopted by TRA Should be Provided to Schools and Libraries?45			
	Issue 12	Support for Health Care Providers48			
	Issue 13	How Should the TRA Monitor Provision of Supported Service to Determine if Support is Being Used as Intended Until Competition Develops?			
	Issue 14	Are Any Changes in State Laws or Rules Needed?51			

Issue 1	Should the Access Reform Issues be Incorporated Into the Schedule Addressing Phase II of the Universal Service Proceeding?
ORDERING	PARAGRAPHS53
LIST OF CO	MMONLY USED ABBREVIATIONS59
Exhibit A	Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157.
Exhibit B	Order Establishing Intrastate Discounts for Schools and Libraries Pursuant to Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157.
Exhibit C	Order Establishing Procedures for Lifeline Consents Pursuant to Section 214(e) of the Telecommunications Act of 1996 and FCC Order 97-157.
Exhibit D	Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, as Amended, and FCC Order 97-157.

INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Directors' Conference on February 3, 1998, to make findings of facts and conclusions of law on the issues in Phase I of this docket. The Universal Service docket was convened to establish an intrastate universal service funding mechanism pursuant to Tenn. Code Ann. § 65-5-207 (Universal Service), 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended, the federal Telecommunications Act of 1996 (the "Telecom Act"), and Federal Communications Commission (FCC) Order 97-157, 12 FCC Rcd 8776 to 9616 (1997). Phase I establishes the guidelines and defines the parameters for the other two phases of this docket. Phase II will identify the appropriate cost methodology and calculate the required intrastate support needed while Phase III will consider any necessary rate rebalancing. This is not a final Order, but shall be incorporated into any final Order as if fully rewritten therein.

I. BACKGROUND

In 1995, the Tennessee Legislature enacted the Tennessee Telecommunications Competition Act (the "Tennessee Act"), Section 1 of which became Tenn. Code Ann. § 65-4-123, and Section 18 of the Act became Tenn. Code Ann. § 65-5-207. Following the enactment of the Tennessee Act, the United States Congress passed the Telecom Act on February 8, 1996. Both the Tennessee Act and the Telecom Act address the preservation of universal telephone service at affordable rates. The Telecom Act addresses universal service in § 254 by establishing a funding mechanism "to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a price comparable to those in lower cost areas for similar

The Telecommunications Act of 1996, Public Law 104-104, 104th Congress, February 8, 1996. 47 U.S.C. § 251 et. seq.

services." ² The Tennessee Legislature addresses the preservation of universal service in Tenn. Code Ann. § 65-5-207(a) stating that "Universal service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service."

Responsibility for implementing the interstate portion of Universal Service in the Telecom Act was delegated to the FCC by the United States Congress while responsibility for implementing the intrastate portion of Universal Service in the Telecom Act was delegated to the Authority in Tenn. Code Ann. § 65-5-207(a). On May 8, 1997, the FCC issued its Report and Order, FCC Order No. 97-157, which established "a plan that satisfies all of the statutory requirements, and puts into place a universal service support system that will be sustainable in an increasingly competitive marketplace."

On October 21, 1997, after reviewing the comments received in response to the Hearing Officer's Notice of Proposed Schedule and Request for Comments and the legal and policy issues presented by the participants, the TRA approved separating the Universal Service proceeding into two (2) phases. On February 17, 1998, the Authority approved the addition of a third phase to this docket to address rate rebalancing. The issues to be addressed in Phase I were approved and adopted at a specially scheduled Directors' Conference held on October 30, 1997. Fifteen (15) issues, including subparts, were approved.

² FCC Order 97-157, 12 FCC Rcd 8780 (1997), ¶ 1.

³ FCC Order 97-157, supra note 2 (1997), ¶ 2.

The following Orders previously issued by the TRA are of significance in this proceeding: Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157, attached hereto as Exhibit A; Order Establishing Intrastate Discounts For Schools and Libraries Pursuant To Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157, attached hereto as Exhibit B; Order Establishing Procedures for Lifeline Consents Pursuant to Section 214 (e) of the Telecommunications Act of 1996 and FCC Order 97-157, attached hereto as Exhibit C; and Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, As Amended, and FCC Order 97-157, attached hereto as Exhibit D.

II. PARTIES TO THE PROCEEDING

At the second Pre-Hearing Conference held September 23, 1997, the Hearing Officer admitted the following entities as Parties with full rights of participation: AT&T Communications of the South Central States, Inc., BellSouth Cellular Corp., BellSouth Telecommunications, Inc., Ben Lomand Rural Telephone Cooperative, Citizens Local Exchange Carriers, Coalition of Small LECs and Cooperatives, Office of the Attorney General Consumer Advocate Division, DeKalb Telephone Cooperative, Inc., Electric Power Board of Chattanooga, GTE Mobilnet, MCI Telecommunications Corp., NEXTLINK Tennessee LLC, North Central Telephone Cooperative, Time Warner Communications of the Mid-South, Twin Lakes Telephone Co., United Telephone-Southeast and Sprint Communications L.P., West Kentucky Rural Telephone Cooperative Corp., Yorkville Telephone Cooperative, the Tennessee Municipal Telecommunications Group, and TCG MidSouth, Inc.

The following entities filed requests for permission to monitor the proceeding: Deltacom, Inc., Phoenix Network, Inc., Standard Communications Co., 360° Communications Company, WorldCom, Inc., AVR L.P. d/b/a Hyperion of TN L.P., LCI International Telecom Corp., TN Department of Finance and Administration, TN Department of Education and Charlene Taylor (Chaz Taylor, Inc.).

III. EXECUTIVE SUMMARY

This Order contains the TRA's findings in Phase I of the Universal Service funding proceeding which addresses the non-cost issues. Phase I specifically determines how Tennessee's intrastate USF should be structured for non-rural carriers. A digest of the TRA's findings is presented in this section. These findings are discussed by issue with specificity in Section IV of this Order.

The Authority first defines the parameters for determining the appropriate size of the intrastate USF, realizing that the size of the fund could have a significant impact upon competition. A fund that requires large contributions from telecommunications providers could discourage new entrants from doing business in Tennessee and encourage such companies to devote their resources to other states where Universal Service contributions are less. To the contrary, a fund that is too small could result in high cost areas not receiving the support needed to maintain "affordable" telephone services.

The Authority also concludes that the Tennessee intrastate USF will provide support to carriers serving customers in high cost areas, to carriers serving low income customers, and to carriers providing discounted educational lines to schools and libraries. Additionally, the Tennessee Relay Center and public interest payphones may eventually receive support from the Tennessee USF. The FCC's USF will provide similar support to cover the interstate needs of

customers in high cost areas, low income customers, and educational lines to schools and libraries. The TRA's findings in Phase I of this proceeding are summarized below with more specificity following this section:

Support will not be based on the income level of the subscriber.

To promote competition and customer options, the Authority finds that support should be provided to residential subscribers in high cost areas regardless of the subscriber's income level. The Authority elects not to build affordability standards into the revenue benchmark as long as the benchmark is based on current rates.

Services to be made available by a carrier to receive intrastate USF support.

In order to receive intrastate Universal Service support, carriers must be designated by the Authority as an Eligible Telecommunications Carrier (ETCs). Each ETC will have certified service areas approved by the Authority. To receive this intrastate ETC designation, carriers will be required to make the following services available to all residential subscribers in the ETC's certified service areas: access line consisting of dial tone, touch-tone, and local calling area usage, toll blocking, access to E-911 services, access to directory assistance, access to interexchange carriers and access to operator services. Intrastate ETCs will also be required to offer Lifeline, Link-up and educational discounts consistent with Tenn. Code Ann. § 65-5-208(a)(1).

Intrastate ETCs are also required to advertise the availability of service and charges for service throughout their service areas. This is consistent with the provisions adopted by the FCC for the interstate USF.

Facilities requirements for intrastate ETCs.

The Authority finds that the facilities requirements for intrastate ETCs should be consistent with the FCC's facilities requirements. The FCC's requirements are compatible with the Authority's goal of providing Universal Service support to the carrier providing the facilities and not to a reseller of the service. Specifically, the Authority finds that, if an ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, Avoidable Costs of Providing Bundled Services For Resale By Local Exchange Companies (hereafter the "Avoidable Cost Docket"), such ETC will not be eligible for intrastate Universal Service support on that particular service. This approach ensures that the carrier incurring the cost of facilities will receive the support.

Intrastate support for primary residential lines.

The Authority finds that intrastate support will be provided only on primary residential lines and not on business or additional residential lines. Including only residential lines, and not business lines, is consistent with Tenn. Code Ann. § 65-5-207 that defines Universal Service as "residential basic local exchange telephone service."

Service areas are to be designated by wire center.

The Authority finds that service areas should be designated by wire center. Although the TRA recognizes that smaller support areas, such as CBGs, would better target universal support, it also generally recognizes that use of a CBG designation has inherent infirmities, such as identifying customers and costs, which would make this option difficult to implement and costly to administer. It is also clear that the *Communications Act, as amended, 47 U.S.C.* § 214, requires ETCs to offer the services supported by the USF "throughout the service area for which the designation is received." For purposes of this proceeding, implicit subsidy exists

when, for a specific wire center, the forward-looking costs of providing the services included in the revenue benchmark exceed the revenues generated by the benchmark services.

Services to be included in the revenue benchmark.

The Authority finds that when competitors decide to provide service to residential customers in high cost areas, such competitors will offer a number of services to the customer (e.g., local service, long distance, vertical features, etc.). For this reason, the revenue benchmark used in calculating support for each wire center should be the average revenue per residential line for that wire center. Specifically, the revenues in the benchmark should include the following services: local service, intraLATA toll, directory assistance, all vertical features, touch-tone, zone charges, interstate and intrastate access charges, the interstate subscriber line charge, and white page services. The revenue benchmark should be calculated using the most current units and rates available at the time the benchmark study is prepared.

In addition, the subsidy currently being provided by Yellow Page advertising is to be included in the revenue benchmark. Since the divestiture of AT&T in 1984, both regulators and the courts have recognized the importance of Yellow Pages in keeping local rates affordable and maintaining universal service. The Authority finds that it is important at this time to continue recognizing the Yellow Page subsidy. The Authority also concludes that including Yellow Pages in the benchmark and thus maintaining a smaller fund, at least in the initial phases, best promotes market entry and a competitive market. Once competitors are firmly established in the state and begin to express an interest in serving high cost areas, the TRA may consider removing Yellow Pages from the benchmark.

The cost studies for each wire center should reflect the forward-looking costs of providing all of the services included in the revenue benchmark. This provides the proper

matching of revenues and costs. If costs exceed the benchmark for the wire center, the difference, less any Federal support, will be funded through the intrastate USF. Costs should be calculated at the wire center level using a generic cost model including both company-specific inputs and generic inputs as determined in Phase II of this docket.

(

Methodologies and assumptions in calculating the cost of UNEs and Universal Service should be consistent.

Some competitors may provide Universal Service through the purchase of unbundled network elements (UNEs). In order to make Universal Service support potentially compensatory to such competitors, the Authority finds that the cost studies underlying the UNE rates and Universal Service support must be consistent. In order to compare the price of UNEs to Universal Service, it is necessary to have consistency in cost methodologies, (e.g., study areas and assumptions). The TRA also recognizes, however, that there are distinct issues to be addressed which may result in differences between the two studies on methodology, such as, but not limited to, inclusion of retail cost in Universal Service, but not in UNEs.

All providers should be required to contribute to the intrastate fund.

The Authority finds that, consistent with the *Telecom Act*, all providers of telecommunications services, regulated or not, will be required to contribute to the intrastate fund with the following two exceptions: 1) A temporary exemption from contribution will be provided for rural carriers and cooperatives as long as these carriers or cooperatives are not serving non-rural customers or have entered into an interconnection agreement to serve non-rural customers; and 2) a *de minimis* exemption will apply if a carrier's contribution to the intrastate USF is less than \$1,000. It is initially believed that, in such instances, administrative cost of collection will outweigh the amounts collected.

The Authority also finds that intrastate telecommunications carriers should be defined consistent with Section 3(a)(49) of the Communications Act, as amended.

Support for schools and libraries and rural health care providers.

For the four services currently discounted to schools and libraries, the Authority finds that existing state discounts will be maintained and the federal pre-discount price will be no greater than the state discounted rate. The Authority also finds that current federal universal support is adequate for rural health care providers, and if it can later be demonstrated that the effectiveness of the federal plan is lacking, the TRA may revisit this issue.

IV. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony on the Phase I issues was presented by the Parties during a hearing (the "Hearing") held on December 8 and 9, 1997. Having heard the Parties' testimony, having reviewed pertinent portions of the record, and having fully considered the positions of the Parties, the TRA considered these matters at its February 3, 1998, Directors' Conference and unanimously made the following specific findings of fact and conclusions of law on the Phase I issues:

ISSUE 1: Services to be Supported by a Tennessee Universal Service Support System.

In considering the services to be supported by the intrastate USF, testimony was presented during the Hearing on services included in the FCC's definition of Universal Service as contained in the *Telecom Act*, and on State statutes relevant to Universal Service. The following issues were considered:

- 1a. Does the TRA use state or Federal defined services?
- 1b. Should the intrastate USF provide support in addition to Federal mandated services?
- 1c. What are the Universal Service core elements?
- 1d. Does Tennessee Relay Center need to be addressed in this proceeding?
- 1e. Do public interest payphones, if determined to be necessary, need to be addressed in this proceeding?

Positions of the Parties

Many of the parties comment that Federally defined services⁴ should be used with the addition of Lifeline, Linkup, and educational discounts which were in place at the time Tenn.

Services in the Federal universal service definition include: single party service, voice grade access to the public switched network, DTMF signaling, access to 911, access to operator services, access to interexchange service, access to directory assistance, and toll control or toll blocking for qualifying low income consumers. FCC Order 97-157 § 22.

Code Ann. § 65-5-208(a)(1) became effective. AT&T Communications of the South Central States, Inc. ("AT&T") argues that Lifeline and Linkup were not services as such, but were pricing mechanisms that should be continued. BellSouth Telecommunications, Inc. ("BST") and Sprint suggests that non-primary residential lines should be supported or identified as non-basic local service and exempt from regulation and subject to price changes. BST also argues that single line businesses should be supported if their cost is not covered by the current rate. AT&T, Citizens Local Exchange Carriers ("Citizens"), and NEXTLINK, Tennessee, LLC ("NEXTLINK") argues against support for non-primary residential lines and business lines on the basis that Tenn. Code Ann. § 65-5-207 clearly omitted business lines and that Tenn. Code Ann. § 65-5-208(a)(1) describes "an access line" in singular. The Coalition of Small LECs and Cooperatives (the "Coalition") argues that the network, not the individual residential or business access lines, should be supported since the network was not built to serve only a particular class of customer. The Consumer Advocate Division (the "CAD") comments that educational discounts in place at the time Tenn. Code Ann. § 65-5-208 was enacted are not basic residential services and do not meet the definition of Universal Service. Moreover, the CAD maintains that the Tennessee Relay Center ("TRC") should be included in this proceeding since it was a basic service at the time Tenn. Code Ann. § 65-5-208 was enacted. No other party supported the CAD's argument that the TRC should be addressed as part of this proceeding. State statutes are clear regarding what services should be supported by the intrastate USF. Tenn. Code Ann. § 65-5-207(a) states that: "Universal Service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last resort obligations must be maintained after the local telecommunications markets are opened to competition."

1

Tenn. Code Ann. § 65-5-208(a)(1) goes on to define "basic local exchange telephone service" as: "telecommunications services which are comprised of an access line, dial tone,

touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995."

Consistent with these statutes, the Authority orders the following "core" services to be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995.

Support for business lines are excluded from the definition since those lines are excluded from the statutory definition in Tenn. Code Ann. § 65-5-207(a) for USF purposes only. Also, intrastate support will only be provided on residential customers' primary (first) line and not additional lines. In establishing criteria for determining support, Congress stated in the Telecom Act that the FCC should consider the extent to which telecommunications service "have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." The Authority concludes that this is also an appropriate criteria for intrastate universal service. At this time, the majority of residential customers have only one phone line. Therefore, the Authority finds that support should only be provided on the primary residential lineat this time. The exclusion of the additional residential lines from the definition of Universal Service does not suggest that all residential lines are anything other than basic service and subject to existing law applicable thereto.

Tenn. Code Ann. § 65-5-207(a) states in pertinent part "universal service consisting of <u>residential basic local exchange service</u> at affordable rates."

⁴⁷ U.S.C. § 254(c)(6)

According to access line reports for February, 1998 submitted by BellSouth, only 11% of BellSouth's total residential access lines are additional lines.

The Authority also finds that Lifeline and Link-up services shall be funded though a separate, specific fund within the intrastate USF. This issue is discussed in further detail in Issue 10. The Authority further finds that neither the Tennessee Relay Center (TRC), nor public interest payphones should be addressed in this proceeding. Such issues are more appropriately addressed in separate proceedings where current and future needs, the criteria for determining such needs, and the cost of public interest payphones can be determined. Also, the costs of and the funding mechanism for the TRC can be examined in the same proceeding. If either the TRC or public interest payphones require support funding, such funding should be administered in conjunction with the USF.

ISSUES 2 & 3: Eligible Telecommunications Carriers.

In considering the criteria that a telecommunications carrier must meet to become eligible to receive intrastate Universal Service support, the Authority considered the required services to be offered, advertising requirements and facilities requirements for receiving intrastate support. Specifically, the following issues were considered:

- 2a. How should the TRA address "exceptional circumstances"?
- 3a. What procedures will the TRA use for designating intrastate ETCs?
- 3b. Should those companies not under the TRA's authority be designated as an ETC?
- 3c. Should the TRA adopt the Federal advertising guidelines?
- 3d. Should the TRA adopt the Federal facilities requirements?
- 3e. Must a carrier participate in this proceeding to be eligible for designation as an ETC?
- 3f. What procedure is necessary to ensure that rural carriers satisfy notice of status requirements?

Positions of the Parties

AT&T questions whether carriers who cannot provide one of the core services should be denied Universal Service support. AT&T recommends that such carriers be given the opportunity to request an exception and that such exception requests be handled on a case by case basis. The Coalition states that its members will not be able to provide toll limitation as the FCC has defined it and, in limited situations, they may not be able to provide E-911 or single party service. The Coalition suggests that the TRA should use the FCC provisions to define "exceptional circumstances."

The Parties agree that the FCC's eligibility requirements should be used for intrastate ETCs, but that exceptions should be allowed for a limited time for the inability of a carrier to provide single party service, E-911, and toll limitations. The Parties also agree that exceptions should be addressed on a case by case basis using the FCC's provisions. The Parties suggest that

toll limitation be defined as either toll blocking or toll control. In its post Hearing brief, however, BST indicated that the FCC clarified in its December 30, 1997 Order on Reconsideration stating that the FCC no longer requires that an ETC offer both toll limitation and toll blocking. The FCC now allows ETCs to offer either toll blocking or toll limitation to satisfy ETC requirements. There was no cross-examination of this particular issue at the Hearing.

1

The Parties agree that any company seeking intrastate support and is willing to comply with TRA rules should be required to file a motion or petition for ETC status and that, at a minimum, the requirements of Section 214(e) of the Communications Act, as amended, should be met. The Parties also agree that participation in this proceeding should not be a requirement for ETC status. All of the Parties addressing the advertising requirements recommend that the advertising guidelines contained in the Communications Act, as amended, Section 214(e)(1)(b) are adequate. Most of the Parties recommend that the Authority increase the Federal facility requirements to be "meaningful" facilities. United Telephone-Southeast and Sprint Communications L.P. ("Sprint/UTSE") comment that the facility requirement should be meaningful facilities. The Coalition maintains that the FCC requirements should be adopted, but that "de minimis" facilities should not be considered to meet the requirements (e.g., operator services). The Coalition further argues that allowing resold services to meet the test will allow "cream skimming". NEXTLINK argues that for resold services, the resellers, not the facilities provider, should be given the Universal Service support, while BST maintains that support should be provided to the underlying provider of the facilities. Time Warner Communications of

⁸ Cream Skimming is the process of electing to serve only the most profitable customers.

the Mid-South ("Time Warner") maintains that the carrier incurring the cost of the facilities be provided the support. AT&T advocates that the Authority adopt the Federal facility requirement and allow the use of unbundled network elements ("UNEs") to qualify as use of a carrier's own facilities.

Findings

The Authority finds that carriers must provide each of the core services designated in Issue 1 in order to be eligible to receive intrastate Universal Service support. The Authority also finds that carriers must offer toll blocking service, access to directory assistance, access to interexchange carriers, and access to operator services to be eligible for intrastate support. Since these services are required by the FCC for interstate ETC designation, it is logical to also require them for intrastate purposes.

The Authority recognizes that there may be exceptional circumstances that prevent a carrier from offering all of the core services. Upon a showing by an otherwise eligible carrier that exceptional circumstances prevent them from providing one or more qualifying services, the Authority may grant a carrier's petition for intrastate ETC status for a limited period of time. During such time period, otherwise eligible carriers that are unable to provide one or more qualifying services may still receive intrastate support while they make the upgrades necessary to offer these qualifying services. Requests for exemption will be considered on a case by case basis.

The Authority finds that the requirements for intrastate ETC designation should be consistent with FCC's requirements9 for interstate ETC designation. Specifically, in order to be designated as an intrastate ETC and be eligible to receive intrastate support, the Authority finds that eligible carriers must, throughout their service area: (1) offer the "core" services supported by the intrastate universal service fund; and (2) offer toll blocking; (3) offer access to the following services: directory assistance, interexchange carriers and operator services; and (4) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier; (5) advertise the availability of and charges for such services using media of general distribution; and (6) comply with current and future service quality standards adopted by the TRA.

The Authority also finds that carriers must be certified with the Authority as an ETC in order to receive intrastate Universal Service support. Therefore, if a provider not under the TRA's authority desires intrastate Universal Service support, then that provider must be designated as an intrastate ETC. To receive an intrastate ETC designation, providers must file an appropriate request with the TRA and must comply with the requirements set forth above. Companies seeking intrastate ETC designation shall file with the TRA, a sworn affidavit from an official representative of the company, identifying the services provided as Universal Services

The FCC adopted Section 214(e)(1) rules for determining whether carriers should receive ETC designation and receive Universal Service support. The FCC states: "Pursuant to those criteria, only a common carrier may be designated as an eligible telecommunications carrier, and therefore may receive Universal Service support, and each eligible carrier must, throughout its service area: (1) offer the services that are supported by Federal Universal Service support mechanisms under section 254(c); (2) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier; and (3) advertise the availability of and charges for such services using media of general distribution." FCC Order 97-157, ¶24.

and the manner in which such services are to be provided (e.g., own facilities, resell purchased UNEs, resell services purchased at wholesale rates, etc.).

The Authority adopts advertising guidelines consistent with the guidelines adopted by the FCC for interstate purposes. Specifically, the Authority finds that, in order to be eligible for intrastate support, carriers must advertise the availability of the required services throughout the service area of the carrier using media of general distribution. The Parties have not suggested that the TRA adopt any more stringent advertising guidelines. These advertising guidelines comply with section 214(e)(1)(B) of the Communications Act, as amended.

The Authority also defines the facility requirements for carriers to receive intrastate Universal Service support. The FCC interprets the term "facilities" to mean "physical components of the telecommunications network that are used in the transmission or routing of the services designated for support." The FCC further concluded that a carrier offering any of the services designated for Universal Service support, either in whole or in part, over facilities obtained as unbundled network elements pursuant to Section 251(c)(3) of the Telecom Act satisfies the "own facilities" requirement of Section 214 (e)(1)(A)¹¹ of the Telecom Act. The FCC omitted pure resale from its definition of the term "facilities-based." The Authority finds that the FCC's facilities requirements are consistent with the Authority's goal of providing Universal Service support to the carrier providing the facilities and not to a reseller of the service. Therefore, the Authority adopts facilities requirements consistent with the FCC's requirements. Specifically, the Authority finds that, if an intrastate ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, Avoidable Costs, such ETC will not be eligible for intrastate Universal Service support

¹⁰ FCC Order 97-157, supra note 2, ¶ 128.

¹¹ FCC Order 97-157, supra note 2, ¶ 160.

on that particular service. This approach ensures that the carrier incurring the cost of facilities will receive the support. Such a case might exist where a carrier is providing operator services and reselling local service (loop and switch) purchased at a wholesale discount. In this instance, the support will go to the carrier providing the service at the wholesale rate, not the reseller of the wholesale local service.

The Authority also finds that companies are not required to participate in this proceeding in order to receive Universal Service support. However, all companies desiring to receive Universal Service support must be designated as an intrastate ETC by the Authority.

Finally, rural certification has been previously addressed by the TRA in this docket by order dated November 3, 1997, and captioned Order Establishing Procedures For Self-Certification Of Rural Telephone Companies Pursuant To Section 153(37) Of The Communications Act, As Amended, And FCC Order 97-157. Consistent with that Order, the Authority finds that companies requesting rural certification from the FCC must file a copy of such request with the TRA.

ISSUE 4: Carrier of Last Resort Designation.

In addressing the carrier of last resort requirements included in State statutes and how these carrier of last resort requirements are to be reconciled with Federal laws on relinquishment of service, the Authority considered the following issues:

- 4a. Is the term carrier of last resort still relevant?
- 4b. If the term carrier of last resort is relevant, how do we designate?
- 4c. Can a carrier of last resort withdraw service and, if so, how?

Positions of the Parties

The Coalition states that a carrier of last resort and an ETC are similar and that each area of the state should have an ETC designated to act as a carrier of last resort. The Coalition further stated that there must be another ETC in place before an ETC can withdraw service. BST suggests that carrier of last resort has not been replaced by law, and that an ETC and a carrier of last resort are the same when there is only one provider. Furthermore, BST argues that when more than one ETC serves the same area, the carrier of last resort designation may no longer be necessary.

Findings

Tenn. Code Ann. § 65-5-207(a) requires that "carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition." The FCC addresses carrier of last resort obligations in its ETC rules. FCC Rule 54.205¹² states that "A state shall permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. An ETC that seeks to relinquish its ETC designation for an area served by more than one ETC shall give advance notice to the state commission of such relinquishment." Further, 54.205 states "Prior to permitting a telecommunications carrier designated as an ETC

¹² 47 CFR § 54.205.

to cease providing universal service in an area served by more than one ETC, the state commission shall require the remaining ETC(s) to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETC. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed."

We do not find the designation of carriers of last resort as articulated in state law irrelevant at this time, but instead recognize that the language of the law has not changed, and in service areas where only one ETC exists, the term as contemplated by statute is applicable. The Authority also finds that the exit requirements in FCC Rule 54.205 provide sufficient exit barriers to address carrier of last resort obligations required by TCA §65-5-207(a).

ISSUE 5: Service Areas for ETCs

During the proceeding, the Parties presented testimony regarding the designation of service areas for intrastate ETCs. Also discussed was the appropriate size of the service areas and ETC requirements for serving customers within the designated service areas. Prior to the hearing, the Parties identified the following related issues to be addressed:

- 5a. How does the TRA designate service areas for non-rural areas?
- 5b. Should an ETC be required to provide services throughout its designated service area? If so, what services must the ETC provide?
- 5c. Should rural carriers be required to file proposed service areas and can others comment on that filing?
- 5d. Are there are any unserved areas in Tennessee?

Positions of the Parties

All Parties filing testimony comment that non-rural service areas should be no larger than the wire center. Sprint and BST recommend designating census block groups ("CBGs") as service areas to reduce the impact of "cream skimming" because of the divergence of customers and associated costs found in some wire centers. BST admits, however, that designating service areas by CBG would be difficult to administer. Other Parties argue that preparing cost studies by census block groups would be burdensome because (1) the existing telephone network was constructed by wire centers instead of CBGs, and (2) CBGs may be served by more than one LEC. AT&T contends that requiring the competing local exchange company ("CLEC") to provide service throughout the incumbent local exchange carrier's ("ILEC") entire designated service area is a barrier to entry and should be avoided. NEXTLINK recommends not designating service areas for CLECs, only incumbents.

Findings

Guidance from the FCC and the Joint Board indicates that states should not designate service areas that are unreasonably large because "unreasonably large service areas will discourage competitive entry by increasing the expenses associated with such entry."13 The FCC further stated that "although they agreed with the majority of the commentaries that smaller support areas better target support, they were concerned that it becomes progressively more difficult to determine accurately where customers are located as the support areas grow smaller. Carriers currently keep records of the number of lines served at each wire center, but do not know which lines are associated with a particular CBG." 14 In this proceeding, all Parties filing testimony agree that non-rural service areas should be no larger than the wire center, or the CBG. Although it is recognized that smaller support areas, such as CBGs, better target universal service support, the Parties generally acknowledge that CBG designation has inherent infirmities, such as identifying customers and costs by CBG alone, which make this option difficult and costly to overcome. The Authority therefore finds that service areas shall be designated by wire center. The Authority also finds that under the provisions of Section 214(e)(1) of Communications Act, as amended, an ETC must offer the services supported by the USF throughout the service area for which the designation is received,15

The Authority also finds that rural carriers shall not be addressed in this proceeding. The areas served by rural carriers will be supported by existing Universal Service support mechanisms until appropriate forward-looking support mechanisms (interstate and intrastate) are

¹³ FCC Order 97-157, supra note 2, ¶ 184.

FCC Order 97-157, supra note 2, ¶ 185.

¹⁵ 47 USC § 214 (e)(1).

developed for rural carriers. Once these forward-looking mechanisms are in place and rural carriers begin receiving intrastate support, it will be appropriate for rural carriers to contribute to the intrastate USF. The TRA may revisit the issue at that time. Finally, neither the TRA nor the Parties were aware of any unserved areas in the State.

ISSUE 6: Contributors to the Tennessee Intrastate Universal Service Fund

This section establishes the requirements for contributions to the intrastate universal service fund. The parties identified the following issues for consideration:

- 6a. Define telecommunications carrier. Is the TRA required to use the Federal definition?
- 6b. Does state or Federal law require contributions or participation from carriers not under TRA authority?

Positions of the Parties

AT&T, BST, and the Coalition argue that all telecommunications carriers, regulated or not, should contribute to the intrastate USF in order to receive support from any Tennessee USF system. AT&T, BST, Sprint, and the Coalition maintain that "telecommunications carrier" should be defined using the Federal definition contained in Section 3(a)(49) of the Communications Act, as amended, since it is broad and flexible. There was no cross examination on this issue during the hearing.

Findings

In order to define "intrastate telecommunications carrier," it is necessary to also define "intrastate telecommunications" and "intrastate telecommunications service." For purposes of this proceeding, the Authority finds that intrastate telecommunications carrier, intrastate telecommunications and intrastate telecommunications service be defined consistent with the Telecom Act. ¹⁶ Specifically, the Authority defines an intrastate telecommunications carrier as --

Section 3(a)(49) of the Communications Act, as amended, defines telecommunications carrier as, "any provider of telecommunications services, except that such service does not include aggregators of telecommunications services." In addition, the Telecom Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received" and telecommunications services as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

any provider of intrastate telecommunications services, except that such service does not include aggregators of intrastate telecommunications services. The Authority defines intrastate telecommunications as -- the transmission, between or among points located within the State of Tennessee specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Finally, the Authority defines intrastate telecommunications services as -- the offering of intrastate telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

The FCC's May 8, 1997 Universal Service order provides states with guidance regarding USF contributors. In that order, the FCC found no reason to exempt any of the broad classes of telecommunications carriers that provide interstate telecommunications services from contribution to the interstate USF (including satellite operators, resellers, wholesalers, and paging companies) because the *Telecom Act* required every telecommunications carrier that provides interstate telecommunications services to contribute to the interstate USF. The FCC agreed with the Joint Board that any entity that provides interstate telecommunications services directly to the public for a fee must contribute to the interstate USF. The FCC's Order further provided that telecommunications services include, but are not limited to: "cellular telephone and paging services; mobile radio services; operator services; PCS; access to interexchange service; special access; wide area telephone service (WATS); toll-free services; 900 services; MTS; private line; telex; telegraph; video services; satellite services; and resale service." In paragraphs 794 to 797 of the FCC's Order, the FCC also specifically concluded that payphone providers should contribute to the interstate USF.

¹⁷ FCC Order 97-157, supra note 2, ¶ 780.

Consistent with the requirements of the *Telecom Act*, the Authority finds that, except for the two exemptions noted below, all providers of intrastate telecommunications services in Tennessee, regulated or not, shall be required to contribute to the intrastate USF. The Authority finds that the following two (2) exceptions should apply to the requirement to contribute:

- A temporary exemption from contribution by rural carriers and cooperatives as long as the rural carrier or cooperative is not serving non-rural customers and has not entered into an interconnection agreement to serve non-rural customers;
- 2) A de minimis exemption applicable if a telecommunications carrier's annual contribution to the USF is less than \$1,000. Like the FCC, the Authority currently believes that the administrative cost of collecting the support will outweigh the amounts collected. The de minimis exemption will be consistently monitored and amended as the TRA deems appropriate.

This finding includes telecommunications carriers not subject to the authority of the TRA.¹⁸ Requiring contributions from a broad base of telecommunications carriers will ensure equitable and nondiscriminatory contributions and will reduce the burden on any particular class of carrier. Although ILECs (including co-operatives), CLECs, IXCs, COCOTs, paging, and resellers are

Both state and federal statutes provide broad authority for administration and enforcement of the intrastate USF by the TRA against all intrastate telecommunications carriers whether regulated or not by the TRA. Federal statute 47 U.S.C. § 254(f) states in pertinent part, "A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." In addition, Tenn. Code Ann. 65-5-207(c)(4) states that the TRA shall, "Administer the universal service support mechanism in a competitively neutral manner, and in accordance with established authority rules and federal statutes. {Emphasis Added}

the most visible telecommunications carriers from which USF support will be obtained, like the FCC, a comprehensive list of carriers contributing to the USF will not be named at this time.

ISSUE 7: Affordability of Rates

In addressing the affordability of current rates and how the TRA will monitor the affordability of telephone rates, the following issues were considered:

- 7a. If current rates are set using existing statutes, are rates considered affordable?
- 7b. Must the TRA use Federal standards for affordability?
- 7c. If so, how should the TRA gather information, what information should be 'gathered, and how should the TRA apply the Federal standards in this case?

Positions of the Parties

All of the Parties filing testimony agree that defining affordability is a policy issue and not a legal or economic decision. The Parties maintain that current rates appear to be affordable based on a reported 94.5% subscribership level in Tennessee and the fact that this state's average local rate is below the national average. UTSE and Time Warner comment that local rates could be increased and still remain affordable, yet no studies were presented in support of their position.

AT&T, MCI and Time Warner argue that Universal Service support should be provided only to subscribers who cannot afford to pay rates reflective of the cost of providing the service. They contend that support must be based on the subscriber's income level. BST, on the other hand, suggests that support be provided in high cost areas regardless of the subscriber's income level. BST further contends that basing support on the income levels of individual subscribers would be unduly burdensome and may violate the *Telecom Act* and state statutes prohibiting discriminatory pricing.²⁰ BST also points out that Tennessee already has Lifeline and Linkup, the state's vehicles for providing low income support.

Tenn. Code Ann. § 65-4-122 prohibits unjust discrimination in pricing.

Pre-filed direct testimony of Peter Martin at Page 14, and further referenced as *Telephone Subscribership in the United States*, FCC Industry Analysis Division, October 1997, citing July 1997 subscribership levels.

Findings

Section 254(b)(1) of the *Telecom Act* states that "quality services must be available at just, reasonable, and affordable rates." State statutes indicate that rates are just and reasonable when they are deemed affordable.²¹ In addition, State statutes have procedures for determining if rates are affordable when a company is under price cap regulation.²² If a company is not under price cap regulation, the TRA has the power to fix just and reasonable rates after hearing, upon notice, by order in writing.²³

In its May 8, 1997, Order adopting the Joint Board's Universal Service recommendations, the FCC indicates that "States should monitor rates and non-rate factors, such as subscribership levels, to ensure affordability.²⁴ We agree with the Joint Board that there is a correlation between subscribership and affordability and we further agree that joint examination by the Commission and the states of the factors that may contribute to low penetration is warranted in areas, such as insular areas, where subscribership levels are particularly low." ²⁵

After considering the FCC's comments and the Parties' position that current rates in Tennessee are at affordable levels based on statewide subscribership percentages and as compared to the rates in other states, the Authority finds that support should be provided on the primary access line of residential subscribers in high cost areas regardless of the subscriber's income level. There is no need, at this time, to build affordability standards into Tennessee's revenue benchmark, as long as the benchmark is based on current rates. The TRA's position promotes competition and customer options in high cost areas, and is consistent with the FCC's

Tenn. Code Ann. § 65-5-209(a) states that rates are just and reasonable when deemed affordable.

²² Tenn. Code Ann. §. 65-5-208.

²³ Tenn. Code Ann. §§ 65-5-201 to 203.

FCC Order 97-157, supra note 2, ¶108.

²⁵ FCC Order 97-157, supra note 2, ¶108.

Universal Service conclusion that it shall not consider income levels in determining who should receive interstate Universal Service support.²⁶ The TRA further finds that affordability of rates should be monitored through periodic evaluations of subscribership levels and associated market conditions such as average income levels, inflation and other socioeconomic factors.

²⁶ FCC Order 97-157, supra note 2, ¶ 115.

ISSUE 8: Implicit and Explicit Subsidies

In order to establish the intrastate USF, the cost of providing service must be measured against the revenue generated from those services to determine if subsidies exist. Identification of subsidies is considered in the three (3) issues identified below:

- 8a. Define implicit and explicit subsidy.
- 8b. How does the TRA determine implicit and explicit subsidies in current rates?
- 8c. How does the TRA make implicit support explicit as defined by the Act and the FCC?

Positions of the Parties

Sprint defines implicit subsidy as existing support that is provided by unknown sources and amounts, and explicit subsidy as calculable and identifiable. The Tennessee Cable Telecommunications Association ("TCTA") contends that an implicit subsidy is the difference in forward-looking economic cost and the revenue benchmark and that it is not necessary to carry forward these implicit subsidies which could be a barrier to entry. Further, TCTA maintains that implicit subsidies could be converted to explicit subsidies over a phase-in of three years. The Coalition contends that defining implicit and explicit subsidies is not necessary and that, instead, the TRA should focus on determining reasonable, comparable, and affordable rates. BST comments that implicit rates are buried while explicit rates are clearly identified. AT&T argued that subsidies are deviations between prices at which transactions occur and prices at which transactions would occur in a competitive environment.

There is little agreement among the Parties on how to identify subsidies in current rates.

NEXTLINK states that the TRA must identify services that are earning revenues in excess of their cost, and that implicit subsidies should be determined on a service by service basis. Citizens contends that embedded costs must be used to determine subsidies for rural companies. Sprint argues that the Authority should determine the funding requirement and net effect on each

carrier, then allow each carrier to rebalance rates based on the net impact. AT&T contends that only a few services comprise the majority of any subsidy, therefore, it is not necessary to determine current implicit subsidies. AT&T also states that the implicit subsidy in access should be determined first, then move to the next category until the needed subsidy is identified. BST argued that the amount and structure of USF depends on existing rates. BST believes that USF should begin with rate rebalancing so as to minimize the need for subsidies without jeopardizing the Universal Service objectives. TCTA contends that the TRA should obtain the revenues and costs for each supportable service to identify the implicit subsidies that exist in rates using fully distributed costs on a forward-looking economic cost basis. MCI recommends calculating the forward-looking economic costs using the FCC prescribed criteria to determine if the revenues cover costs.

Findings

É

For purposes of this proceeding, the Authority finds that a subsidy occurs when the costs associated with at least one good or service exceeds its revenue, while the revenues from the sale of some other set of goods or services exceed the associated costs, such that total costs are recovered. Implicit subsidies are "hidden" in the prices of certain goods or services. Moreover, the sources, amounts, and uses of implicit subsidies may not be known with precision. (e.g., one or more goods or services are priced above the level necessary to recover total costs and one or more other goods or services are priced below their costs, but the amounts and uses of the "subsidies" are not itemized.) All that is known with certainty is that total revenues equal or exceed the total costs of all the goods and services sold.

An explicit subsidy is a set payment intended to cover the cost in excess of revenues for certain goods delivered or services provided. The sources, amounts, and uses of the explicit subsidies are identified and known with precision. (e.g., service A is intentionally priced to

recover more than the costs for providing the service, thereby generating a revenue stream of a known amount to cover costs associated with Service B. In this case, the subsidy is explicit, because Service A is intentionally priced in excess of cost, the amount of subsidy is known, and the subsidy specifically covers the costs in excess of revenues for Service B, which is intentionally priced below cost.)

(

The Authority finds that a group of services is receiving a subsidy if the associated forward-looking economic costs exceed the revenues from the sale of the services. The costs associated with the Universal Service supported services are those which will be determined by the TRA in Phase II of this docket. The existing implicit subsidy for a particular wire center is the amount by which the costs of providing the services included in the revenue benchmark exceeds the revenues generated by the services in the benchmark. The TRA also finds that after the total amount of Universal Service support is initially determined in this way, the affected companies should file proposals to rebalance rates, including a plan to collect the resulting final support needed for Universal Service. In rate rebalancing, however, no rate should be reduced below the associated incremental cost of the service.

The Authority defers a decision on how to make implicit support explicit until the end of Phase II of this docket.

ISSUE 9: Revenue Benchmark and Preliminary Cost Modeling Issues

For clarity, the revenue benchmark and preliminary cost modeling issues will be discussed separately.

Revenue Benchmark

The revenue benchmark is used to identify the high cost wire centers in the state (i.e., the areas receiving a subsidy). High cost areas are defined as wire centers where the cost of the services included in the revenue benchmark exceed the revenues from the services in the benchmark. In this proceeding the Authority addresses the following issues:

- 9j. Which revenues should be included in the revenue benchmark?
- 9k. What time period should be used to calculate the revenue benchmark?

Positions of the Parties

Sprint/UTSE recommends an affordability benchmark, not a revenue benchmark which would be based on the maximum rate allowed to be charged for the supported services, local, touch-tone and Subscriber Line Charge ("SLC"). Sprint also argues that services such as toll, access and vertical services are subject to competition and are subject to rapid erosion and, therefore, should not be included in the revenue benchmark. The Coalition maintains that the most current revenues of services provided by the network for which the costs are included should be used in the benchmark. BST contends that current revenues for basic local service and SLCs should be included in the revenue benchmark. The effective tariff rate should be used and support should be adjusted when changes in the tariffed rate occur. Citizens comments that only the most current basic service revenues should be included. Time Warner argues for using the maximum rates deemed affordable in the benchmark, and having separate benchmarks for each study area, based on the most recent twelve months. AT&T maintains that the TRA should include the same revenues as those used by the FCC (local, discretionary, interstate and

intrastate access charges and other telecommunications revenues). These revenues should include revenues that will accrue to LECs from the Federal Universal Service support system. AT&T also recommends that the TRA should include the expected revenues from basic local discretionary services, Yellow Pages, intrastate and interstate switched access and intraLATA toll in the revenue benchmark. AT&T also maintains that the most recent 12 months of data should be used. MCI argues for using revenues that make up the Federal benchmark and including toll revenues (local, toll, access, discretionary including vertical, directory advertising, SLC and non recurring charges).

Findings

When competitors decide to provide service to residential customers in high cost areas, such competitors will offer a number of services to their residential customer (e.g., local service, long distance, vertical features, etc.). For this reason, the Authority finds that the revenue benchmark used in calculating support for each wire center should be the average revenue per residential line for that wire center. The average revenue should be calculated using the following services: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (intrastate/interstate), the interstate Subscriber Line charge, and white page services. In addition, the subsidy provided by Yellow Page advertising²⁷ should be included in the revenue benchmark.

Since the divestiture of AT&T in 1984, regulators and the courts have recognized the importance of Yellow Pages in keeping local rates affordable and maintaining universal service. In United States v. AT&T, 552 F. Supp. 131, 194 (USDC D.C., 1982) the Court stated "All

Includes Yellow Page revenue generated by an affiliate or subsidiary of a telecommunications carrier in that wire center, in addition to the publishing fees included on the books of the regulated entity.

those who have studied the issue agree that Yellow Pages provide a significant subsidy to local telephone rates...The loss of this large subsidy would have important consequences for the rates for local telephone service." The Authority feels that it is important at this time to continue recognizing the Yellow Page subsidy. The Authority also finds that including Yellow Pages in the benchmark keeps the USF smaller than it otherwise would be, and, at least in the initial phases of local competition, best promotes market entry and market competition. Once the competitors are firmly established in the state and start expressing an interest in serving high cost areas, the TRA may consider removing Yellow Pages from the benchmark.

ŧ

Although the Authority only requires that "core" services be supported by the intrastate universal service fund (Issue 1), it is not inconsistent to include additional services in the calculation of the revenue benchmark. In order to identify high cost wire centers prior to any rate rebalancing, it is essential to examine not only the costs, but also the revenues of all services which may be contributing to Universal Service costs. This identification includes revenues from virtually all residential services. Any wire center for which the costs exceed these residential revenues is supported by revenues from other geographic areas and/or from non-residential services. In contrast, wire centers where residential revenues exceed costs are net contributors to Universal Service today. These relationships will be important to rational rate rebalancing in Phase III of this proceeding. Moreover, the Authority has determined, as recommended by the Parties, that combined (unseparated) costs be used in identifying universal service costs. This means the cost of the loop, which is used by virtually all services, will not be allocated to individual services. Since all of the costs of the loop are to be included in the cost studies, it is necessary to include all of the revenues for the services using the loop.

The Authority also finds that the current approved tariff rates should be used to determine the revenue benchmark. Demand for usage sensitive revenues should be the latest

twelve (12) months to date units, and the demand for non-usage sensitive revenues should be the most current units.

Preliminary Cost Modeling Issues

While detailed decisions on cost studies will be made in Phase II, the following preliminary cost study issues were considered in Phase I:

- 9a. Should Universal Service cost studies be company-specific or generic?
- 9b. What is the proper territorial scope of Universal Service rates (e.g., statewide by carriers, by service area, or by category of support)?
- 9c. What is the proper level to which deaveraging should be applied in the cost studies?
- 9d. Should rural and non-rural study areas be combined or separated in the cost studies?
- 9e. Which network components are necessary to provide services included in Universal Service?
- 9f. Should Universal Service cost studies be based on cost studies for permanent UNE prices?
- 9g. Should costs be developed on a combined or intrastate basis?
- 9h. Should state specific or Federal factors be used in the cost studies?
- 9i. Is it possible to create a hybrid model from the individually proposed models?

Positions of the Parties

The positions of the parties differ significantly on whether the cost models should be generic or company specific. Sprint/UTSE, Citizens, and TCTA argue that the cost studies should be company-specific. BST maintains that the studies should be generic with state-specific inputs, preferably BST's since its inputs are represented to be those of an efficient firm and represents its actual forward-looking costs. BST also contends that retail costs should be included in the cost studies. Citizens advocates use of embedded costs. MCI maintains that the TRA should use Tennessee specific data. AT&T argues for using studies of an efficient firm.

The positions of the parties also vary significantly regarding the network components to be included in the universal service cost studies. Sprint/UTSE argues for including only the local line rate, touch-tone and SLC in the revenue benchmark; therefore, the components necessary to provide these services should be included in the cost studies. Sprint/UTSE argues against allocating a portion of the loop and switch to other services, (e.g., discretionary, toll, etc.). The Coalition contends that an in-depth evaluation should look at the entire cost of the network. BST argues for including the cost of providing basic local exchange service, (e.g., the loop and the port (non-traffic sensitive component of the local switch), unbundled local switching, unbundled tandem switching and unbundled common transport. Citizens contends that all the components necessary to provide basic service should be included. AT&T argues for including a two-wire loop, two-wire port (the non-traffic sensitive element of local switching, the usage rated element of switching, tandem switching and transport).

Many of the parties provided testimony on how universal service cost studies should compare with the cost studies of unbundled network elements (UNE). Sprint/UTSE indicates that it does not currently have a model that will calculate both UNEs and Universal Service. They contend that costs should be developed on a combined basis with company-specific factors. UTSE maintains that a hybrid model may be possible, but would require considerable time and expense. The Coalition argues that UNEs and Universal Service are used for different purposes and there should be a separate study for each and that costs should be developed on a combined basis with state specific characteristics.

BST argues for using two different models for UNE and Universal Service since, in their judgment, UNEs are calculated for the company as a whole, while Universal Service are calculated to the wire center level. Also, BST maintains that the BCPM model is not capable of providing UNE prices. According to BST, UNEs are wholesale service while Universal Service

Service provides a combined loop and port. Additionally, BST argues that costs should be developed without regard to jurisdictional boundaries. BST suggests that the Authority should calculate the costs and then determine from which jurisdiction the revenues come, using state specific factors. BST also suggests that a huge amount of resources would be needed to develop a hybrid model.

Time Warner contends that Universal Service cost studies should reflect the forward-looking economic cost principles that have been applied for UNEs; however, the same cost proxy model should not be used for both. According to Time Warner, each proceeding should produce consistent results, with state-specific fill factors, labor rates, cost of capital and depreciation rates.

AT&T maintains that the costs for Universal Service should be consistent with the costs of UNEs. That is, Universal Service support should be based on the same cost studies used to calculate costs of UNEs. The facilities are the same in each proceeding; therefore, the methodology should be the same. Additionally, AT&T contends that retail costs are discretionary and should not be included; but, if the TRA decides to include retail costs, they can be added to the costs of the facilities. Also, AT&T recommends that cost studies should estimate the forward-looking economic costs, not jurisdictionally separated cost, and input factors should be representative of Tennessee.

Findings

(

The Authority finds that a generic cost model should be adopted for all companies. A generic model eases the portability of models between companies and serves as a common platform from which company-specific data can be assessed. The Authority also finds that the

territorial scope and level of deaveraging should be consistent with the finding on service areas (Issue 5). Specifically, the cost studies should reflect the estimated costs for each wire center.²⁸

The Authority also finds that the cost studies should include the network components needed to provide all of the services in the revenue benchmark. At a minimum, the entire loop and port, and reasonable allocations of switching costs, tandem switching, transport and any software necessary to provide the services in the revenue benchmark must be included in calculating the forward-looking costs for each wire center.

In developing a Universal Service support program for Tennessee, the Authority finds that the cost studies should use factors which reflect the forward-looking, least cost technology of an efficient firm operating in Tennessee. Wherever possible, these factors should be state-specific with respect to the geographic, topographic, or demographic characteristics of a local service provider's territory at the wire center level. These factors do not necessarily have to represent the company-specific operating practices of the local service provider. The Authority also finds that while it is possible to create a single hybrid cost model, it does not appear to be practical. It may be more feasible to consider a combination of models, as long as the methodology and inputs are consistent, or use separate models for specific elements:

The Authority finds that the methodology and assumptions used in developing Universal Service costs and UNE prices should be consistent. Some competitors may provide universal services through the purchase of UNEs. The TRA recognizes that there are distinct issues to be addressed which may result in a difference between the Universal Service and UNE cost studies, such as inclusion of retail cost in Universal Service but not in UNEs. In order to compare the price of UNEs to Universal Service and make support compensatory to competing carriers, it is necessary to have consistency in cost methodologies, (e.g., study area and assumptions).

The revenue benchmark should also be calculated on the wire center level.

Finally, the Authority finds that, consistent with the position of all the parties addressing this issue, costs should be developed on a combined basis without jurisdictional allocations.

ISSUE 10: How should the TRA determine the basis for support for "low-income consumers?"

In addressing the provision of support for low-income consumers, the TRA considered various aspects of the Lifeline program and waiver requirements to the no-disconnect rule. The following issues were considered:

- 10a. Should the TRA change its existing Lifeline program?
- 10b. What standards and procedures should be adopted to address waiver requirements to the no-disconnect rule?
- 10c. What funding mechanism should be adopted to fund Lifeline and Linkup?

Positions of the Parties

Most of the Parties contend that the TRA should maximize available benefits and conform the state program to the Federal program where they are different. BST also argues that the TRA had already acted to provide the maximum Federal support and all that was left to do was notify the FCC. The Parties also maintain that the FCC waiver requirements to the no-disconnect FCC rule $(54.401(b)(1))^{29}$ are reasonable and should be adopted by the TRA.

Findings

The Authority, by order entered November 7, 1997, and captioned Order Establishing Procedures For Lifeline Consents Pursuant To Section 214(e) Of The Telecommunications Act of 1996 And FCC Order 97-157, has already taken the necessary action to increase Lifeline support to the level where the maximum Federal support can be obtained. The Authority makes no further change to its existing Lifeline program. Also, the Authority finds that the intrastate portion of Lifeline and Link-up shall be funded from the intrastate USF.

The Authority finds that the criteria established in Section 54.401 of the FCC rules should be adopted for granting waivers to the no disconnect rule. FCC rules prohibit carriers

²⁹ 47 CFR § 54.401(b)(1).

from disconnecting the telephone service of a Lifeline customer for non-payment of toll charges except under certain circumstances. Specifically, the TRA will grant a waiver of the FCC nodisconnect rule, if the local exchange carrier can demonstrate that: (1) it would incur substantial costs in complying with this requirement; and (2) it offers toll limitation to its qualifying low-income consumers without charge; and, (3) telephone subscribership among low-income consumers in the carrier's service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a "low-income consumer" is one with an income below the poverty level for a family of four residing in the state for which the carrier seeks the waiver. The Authority also finds that carriers may re-apply for waivers.

ISSUE 11: Support for Schools and Libraries

In addressing support for schools and libraries, the Authority considered the availability of state discounts, and procedures for pre-discount price complaints, as follows:

- 11a. The TRA should state specifically what discounts are available in Tennessee and at what levels.
- 11b. How does the TRA address pre-discount price complaints?

Positions of the Parties

The CAD contends that the TRA should consult with the Department of Education and/
or the Tennessee Education Association³⁰ to address this question. The CAD comments that
since educational discounts are not residential services, they may not be considered part of
Universal Service as defined by the statute. In addition, the CAD questions whether the TRA
has the power to establish any service beyond what is prescribed by the FCC. Sprint argues that
the current educational discounts should be made explicit. NEXTLINK recommends that the
implicit subsidies for educational discounts should be eliminated and made explicit. AT&T
contends that the current state and Federal discounts are enough and that the TRA has already
stated the level of discounts through the adoption of the Federal Discount Matrix. BST argues
that the necessary support should be from the state fund in order to ensure portability among
carriers. BST also agrees with AT&T's position that the TRA has already stated the level of
discounts through the adoption of the Federal Discount Matrix.

The record reflects that over 515 notices were sent to Parties or interested persons in this proceeding. One of the responding interested groups was the Tennessee Department of Education. Ms. Amy Bearman and Ms. Jacqueline Shrago of that Department are on the service list for this proceeding.

Findings

In the interest of ensuring universal and affordable access to telecommunications services for Tennessee schools and libraries, the TRA in its Order in this docket dated September 18, 1997 and captioned Order Establishing Intrastate Discounts For Schools And Libraries Pursuant To Section 254(h) Of The Telecommunications Act Of 1996 And FCC Order 97-157, approved Tennessee schools and libraries to receive funding. Today, every school and library in Tennessee, as a result of the Order entered September 18, 1997, can apply for its share of a national universal service funding beginning with the first quarter of 1998. The funding levels are being reexamined at the national level.

The Authority finds that the existing intrastate discounts provided to schools and libraries for School/Parent Communications Service, In-Classroom Computer Access Service, ISDN and Distance Learning Video Transport Service shall be maintained in addition to the federal discounts. On July 15, 1997, the TRA adopted the Federal Discount Matrix which specifically states the federal discount levels available for schools and libraries in Tennessee. These federal discounts are applied to the pre-discount price, which, for the above discussed services, will be no greater than the state tariffed rate, including applicable state discounts. For the most part, discounted rates provided to schools and libraries will be determined by the Federal Matrix. However, the four (4) above-referenced services are already being provided discounts in accordance with state-approved plans. For these services, schools and libraries will have the opportunity to utilize the state discounted rates, and if they qualify, the Federal discount applied to the state discounted rates. Additionally, because it is possible that Federal funding could be depleted by the time some schools and libraries are approved for Federal discounts, and because it is possible that some Tennessee schools may only minimally qualify for Federal support, the continuance of state-established education plans assures schools and libraries of receiving some level of discounted telephone service.³¹ Companies should immediately make necessary tariffs changes to be consistent with this finding.

The Authority also finds that the existing procedures for addressing pre-discount price complaints shall continue to be used.

The Telecommunications Act of 1996 requires all Schools and Libraries to participate in a competitive bidding process in order to receive the Federal discount on eligible services. Bids must be submitted to establish a "pre-discount" price to which the discount will be applied. The "pre-discount" price must be the lowest amount charged by providers to other Parties for similar services.

ISSUE 12: Support for Health Care Providers

In addressing support to health care providers, the TRA and the Parties considered the necessity for and cost of providing additional support to rural areas. The following two issues were considered:

- 12a. Should the TRA provide support in addition to that provided for by the Act and the FCC?
- 12b. If so, who should pay for it and how?

Positions of the Parties

BST suggests that existing Federal support for health care providers is sufficient. The CAD maintains that the Department of Health should be consulted³² and questioned whether additional support could be provided without a change in existing law. The Coalition comments that additional support would not be necessary until the effectiveness of current Federal support is evaluated.

Findings

No party argued that support should be given to health care providers in addition to that provided by the Federal USF. The FCC concluded that all public and non-profit health care providers that are located in rural areas and meet the statutory definition set forth in Section 254(h)(5)(B) are eligible for support under Section 254(h)(1)(A), subject to a \$400 million annual cap. In December, 1997, the TRA determined that Tennessee's rural health care providers can take advantage of the available universal support. The Authority finds that the currently available Federal universal support mechanism for rural health care providers is adequate and that, if in the future it can be demonstrated that the effectiveness of the Federal plan is lacking, the TRA may revisit this issue.

The Universal Service proceeding has been publicly noticed; however, the Department of Health elected not to comment.

ISSUE 13: How should the TRA monitor provision of supported service to determine if support is being used as intended until competition develops?

In addressing the need for the TRA to monitor the provision of supported services, the Authority considered the following sub-issue:

13a. Does the TRA need cost allocation rules or accounting safeguards to determine that services supported do not bear more than a reasonable share of joint and common cost or otherwise unnecessarily subsidize a service?

Positions of the Parties

AT&T and BST contend that the TRA should monitor service levels until two or more providers are in a particular area. BST maintains that additional safeguards are not necessary because Universal Service joint and common costs will be determined in Phase II. The CAD argues that rules are needed to make sure support is not being used to subsidize competitive services. The Coalition maintains that safeguards are needed only to monitor service levels and that there are other cost allocation rules already in place to guard against cross-subsidization. There was no cross examination on this issue during the hearing.

Findings

Section 254(k) of the Telecom Act prohibits carriers from using revenues from noncompetitive services to subsidize competitive services. This Section also gives the FCC and States, respectively, the authorization to design cost allocation rules, as necessary, to ensure that services included in the definition of universal services bears no more than a reasonable share of the joint and common costs of facilities used to provide those services. The FCC considered this matter in its October 7, 1997, Notice of Proposed Rulemaking in CC Docket 80-286 but has yet to reach a final decision.

Historically, Tennessee has followed the FCC's lead on accounting and separations issues (i.e., adoption of USOA, Part 64, and Part 36). While the Authority elects not to adopt

new procedures at this time, we will continue to monitor the status of FCC's revised cost allocation rules and may adopt them at a later date. Not adopting new procedures at this time does not diminish the Authority's existing audit powers that could be used for policing and investigative purposes. The Authority also finds that existing quality of service standards should be maintained until the TRA determines they are no longer necessary.

ISSUE 14: Are any changes in state laws or rules needed?

Positions of the Parties

In assessing whether to recommend changes to existing Tennessee laws or TRA rules, the Authority considered the following issues:

- 14a. Is there a conflict between Federal statute provision that Universal Service support should be explicit and the Tennessee statute requirement?
- 14b. How does the TRA reconcile the state Universal Service statute with the Federal statute on "sufficient" Universal Service funding?
- 14c. Will rules have to be changed to allow various regulatory schemes to provide for recovery of any Universal Service contributions?
- 14d. Will rules have to be changed to allow transition for carriers operating under various regulatory schemes?
- 14e. Is legislation needed to appoint a third party administrator?

Positions of the Parties

AT&T contends that there is no conflict between federal and state law and, thus, Tennessee law controls. AT&T argues that Tenn. Code Ann. § 65-5-207 reads "shall" develop rather than "should" develop when referring to Universal Service support. AT&T further argues that the State USF mechanism must conform to both Federal and state statutes. AT&T suggests that the TRA seek an Attorney General's opinion on whether legislation is needed for the TRA to appoint a third party administrator of the USF. AT&T also suggests that the TRA propose legislation stating that the agency has the power to carry out the purposes of the Telecom Act. The CAD argues the entire process should be made a part of a rulemaking proceeding.

Findings

The Authority finds that since this is an ongoing proceeding it is not necessary at this point to rule on whether any TRA rules should be promulgated, or whether state law changes should be recommended to the legislature. This issue may be revisited if it becomes necessary as this docket proceeds.

Issue 15: Should the Access Reform issues be incorporated into the schedule addressing Phase II of the Universal Service proceeding?

Findings

The parties identified this procedural matter for consideration in Phase I of this proceeding. However, this issue was addressed prior to the hearing on Phase I. In an Order issued on December 19, 1997, in Docket 97-00888, the TRA determined that the access reform docket (Docket No. 97-00889) would run concurrently with the hearing of Phase II of this docket.

Having reviewed the record, the Authority makes the following Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED THAT:

(

- 1. The following "core" services shall be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995;
- 2. The intrastate portion of Lifeline and Link-up services shall be funded though a separate, specific fund within the intrastate USF;
- 3. Upon a showing by an otherwise eligible carrier that exceptional circumstances prevent them from providing one or more qualifying services, the TRA may grant a carrier's petition for intrastate ETC status for a limited period of time;
- 4. In order to be designated as an intrastate ETC and be eligible to receive intrastate support, eligible carriers must, throughout its service area: (1) offer the "core" services that are supported by the intrastate universal service fund; (2) offer toll blocking; (3) offer access to the following services: directory assistance, interexchange carriers and operator services; and (4) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier; (5) advertise the availability of and charges for such services using media of general distribution; and (6) comply with current and future service quality standards adopted by the TRA;

- 5. Carriers must be certified with the Authority as an intrastate Eligible Telecommunications Carrier in order to receive intrastate Universal Service support;
- 6. If an intrastate ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, Avoidable Costs of Providing Bundled Service for Resale by Local Exchange Companies, such ETC will not be eligible for intrastate Universal Service support on that particular service;
- 7. Companies are not required to participate in this proceeding in order to be designated as an intrastate ETC and receive Universal Service support;
- 8. Requirements in FCC Rule 47 CFR §54.205 provide sufficient exit barriers to address carrier of last resort obligations required by TCA §65-5-207(a);
- 9. Service areas shall be designated by wire center. Pursuant to the provisions of Section 214(e)(1) of Communications Act, as amended, an ETC must offer the services supported by the USF throughout the service area for which the designation is received;
 - 10. Rural carriers shall not be addressed in this proceeding;
- 11. For purposes of this proceeding, the Authority defines an intrastate telecommunications carrier as -- any provider of intrastate telecommunications services, except that such service does not include aggregators of intrastate telecommunications services. The Authority defines intrastate telecommunications as -- the transmission, between or among points located within the State of Tennessee specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. Intrastate telecommunications service is defined as -- the offering of intrastate telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used;

- 12. Except for the two exemptions noted below, all providers of intrastate telecommunications services in Tennessee, regulated or not, shall be required to contribute to the intrastate USF. The Authority finds that the following two (2) exceptions shall apply to the requirement to contribute: 1) A temporary exemption from contribution by rural carriers and co-operatives as long as the rural carrier or cooperative is not serving non-rural customers or entered into an interconnection agreement to serve non-rural customers; 2) A de minimis exemption applicable if a telecommunications carrier's annual contribution to the USF is less than \$1,000;
- 13. Support shall be provided on the primary access line of residential subscribers in high cost areas regardless of the subscriber's income level;
- 14. Affordability of rates shall be monitored by the Authority through periodic evaluations of subscribership levels and associated market conditions such as average income levels, inflation and other socioeconomic factors;
- 15. A subsidy occurs when the costs associated with at least one good or service exceeds its revenue, while the revenues from the sale of some other set of goods or services exceed the associated costs, such that total costs are recovered. A subsidy is implicit when it is not identified and itemized. A subsidy is explicit if it is specifically identified and itemized. For purposes of this proceeding, a group of services is receiving a subsidy if the associated forward looking economic costs exceed the revenues from the sale of the service;
- 16. After the total amount of Universal Service support is initially determined, the affected companies should file proposals to rebalance rates, including a plan to collect the resulting final support needed for Universal Service;
- 17. The revenue benchmark used in calculating support for each wire center shall be the average revenue per residential line for that wire center. The average revenue shall be

calculated using residential revenues from the following services: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (intrastate/interstate), the interstate Subscriber Line Charge, and white page services. In addition, the subsidy provided by Yellow Page advertising shall be included in the revenue benchmark;

- 18. The cost studies should reflect the estimated costs for each wire center. Cost studies shall include the network components needed to provide all of the services in the revenue benchmark. At a minimum, the entire loop and port, and reasonable allocations of switching costs, tandem switching, transport and any software necessary to provide the services in the revenue benchmark must be included in calculating the forward-looking costs for each wire center;
- 19. The methodology and assumptions used in developing Universal Service costs and UNE prices shall be consistent;
- 20. Universal Service costs shall be developed on a combined basis, without regard to jurisdictional separations;
- 21. Cost studies submitted for Phase II of this proceeding shall use factors which reflect the forward-looking, least cost technology of an efficient firm operating in Tennessee;
- 22. The current approved tariff rates should be used to determine the revenue benchmark. Demand for usage sensitive revenues should be the latest twelve (12) months to date units, and the demand for non-usage sensitive revenues should be the most current units;
 - 23. The Authority makes no further changes to its existing Lifeline program;
- 24. The existing intrastate tariffed discounted rates provided to schools and libraries for School/Parent Communications Service, In-Classroom Computer Access Service, ISDN and

Distance Learning Video Transport Service shall be maintained in addition to the federal discounts;

1

- 25. Federal discounts shall be applied to the pre-discount price which, at a minimum, will be the state tariffed rate applicable to schools and libraries. Companies should amend their tariffs immediately to reflect this requirement;
- 26. Existing procedures for addressing pre-discount price complaints shall continue to be used;
- 27. The Authority finds that the currently available Federal universal support mechanism for health care providers is adequate and that, if, in the future, it can be demonstrated that the effectiveness of the Federal plan is lacking, the Authority may revisit this issue;
- 28. Existing quality of service standards shall be maintained until the Authority determines they are no longer necessary;
- 29. Pursuant to the findings in this Order, the Parties shall file compliant cost studies and revenue analyses in Phase II of this proceeding under the schedule to be set by the Hearing Officer in this proceeding; and

30. Any party aggrieved with this Interim TRA decision on Docket 97-00888 may file a Petition for Reconsideration with the TRA within ten (10) days from and after the date of this Order.

CHAIRMAN

DIRECTOR

ATTEST:

EXECUTIVE SECRETARY

Universal Service (Phase I)

Docket 97-00888

List of Commonly Used Abbreviations

Benchmark Cost Pricing Model
Consumer Advocate Division
Competing Local Exchange Carrier
Census Block Group
Carrier of Last Resort
Eligible Telecommunications Carrier
Federal Communications Commission
Incumbent Local Exchange Carrier
Interexchange Carrier
Local Exchange Carrier
Telecommunications Act of 1996
Tennessee Regulatory Authority
Tennessee Relay Center
Unbundled Network Element
Universal Service Fund

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE December 17, 1997

IN RE: UNIVERSAL SERVICE GENERIC CONTESTED CASE)) DOCKET NO. 97-0088!)
) .

ORDER DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS PURSUANT TO 47 U.S.C. § 214(e), THE TELECOMMUNICATIONS ACT OF 1996, SECTION 254(C) AND FCC ORDER 97-157.

This matter came before the Tennessee Regulatory Authority ("Authority") upon its own motion at a regularly scheduled conference held on December 2, 1997, pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 ("Teleco Act") and Federal Communications Commission (FCC) Order 97-157. The purpose of this Order is to designate Eligible Telecommunications Carriers.

1. Background for the Order

Eligible Telecommunications Carriers ("ETCs"), certified under 47 U.S.C. § 214(e)(1), will be qualified to receive Federal Universal Service support under Section 254(c) of the Teleo Act if, throughout their designated service area, they offer services that are supported by a Federal Universal Service support mechanism under Section 254(c). To receive interstate support the carrier must use either its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another Eligible Telecommunications Carrier). The carrier seeking to receive Universal Service support is also required to make available Lifeline Services and must advertise the availability of the services they provide and the charges for these services. The advertisement must be made through a media of general distribution.

Each common carrier seeking designation as an Eligible Telecommunications Carrier (ETC) under this Order has filed a sworn and notarized Request for Designation in this docket. This Request for Designation indicated that the carrier will provide the services and functions required by the FCC in their certificated areas for purposes of Federal Universal Support. Each request for Designation stated compliance with the requirements set forth in 47 CFR § 54.201 through 54.207 and was signed by a senior official of the carrier.

II. Interim Approval of Service Areas.

The Authority approves on an interim basis the service areas designated by the incumbent local exchange companies (ILECs) in their petitions. However, we are cognizant that the FCC has asked the states not to designate large service areas for ETCs, for fear that the service areas would not be competitively neutral. Testimony by interested Parties on the designation of service areas for ETCs was heard by the Authority during Phase 1 of the Authority's Universal Service proceeding (non-cost issues). Once the Authority reaches a decision on the designation of service areas for ETCs this information will be forwarded to the FCC and Universal Service Administrative Company (USAC) for the purpose of redefining the service areas of designated non-rural ETCs.

III. Carriers Eligible for Universal Service Support

The carriers listed in this section have requested designation by this Authority as Eligible Telecommunications Carriers (ETCs). The carriers are: Ardmore Telephone Company; BellSouth Telecommunications, Inc.; Century Telephone of Adamsville, Inc.; Century Telephone of Claiborne, Inc.; Century Telephone of Ooltewah Collegedale, Inc.; Citizens Telecommunications Company of Tennessee, LLC; Citizens Telecommunications Company of the Volunteer State, LLC; Concord Telephone Exchange, Inc.; Crockett Telephone Company; Humphreys County Telephone Company; Loretto Telephone Company; Millington Telephone Company; People's Telephone Company; Tellico Telephone Company; Tennessee Telephone Company; United Telephone Company; United Telephone-Southeast, Inc.; West

Tennessee Telephone: Ben Lomand Rural Telephone Cooperative: Bledsoe Telephone Cooperative, Inc.: DeKalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.: North Central Telephone Cooperative, Inc.; Skyline Telephone Membership Corporation; Twin Lakes Telephone Cooperative Corporation; Yorkville Telephone Cooperative; and West Kentucky Rural Telephone Cooperative, Inc.

IV. Petitions for Additional Time to Complete Network Upgrades.

In addition to the procedures for certifying potential recipients of Universal Service support as Eligible Telecommunications Carriers, the FCC made provisions for a telecommunications carrier that would be eligible to receive Universal Service support under 47 CFR § 54.201 to receive additional time to upgrade its network systems under exceptional circumstances by petitioning the Authority under FCC Rule § 54.101(9)(c). The ILECs have petitioned for an extension of time to upgrade their network systems to accommodate the toll limitation requirement of the FCC Order as defined in 47 CFR § 54.400(a)(3). The Petitioners stated the exceptional circumstances that the technology to provide the FCC requirement of toll limitation service was not readily available and that the FCC may reconsider this requirement. The Authority grants to the designated Eligible Telecommunications Carriers herein, an extension of time to upgrade their network systems to accommodate the toll limitation requirement of the FCC Order as defined in 47 CFR § 54.400(a)(3) until the FCC reconsiders the matter or until such time as technology to provide the service becomes readily available.*

IT IS THEREFORE ORDERED THAT:

- 1. On an interim basis, the Authority approves the service areas designated in the petitions from the incumbent local exchange companies.
- 2. The Authority grants to the designated eligible telecommunications carriers (ETCs) additional time as stated herein to provide toll limitation service.

This grant of additional time is only for that period of time that the Authority, in its continuing monitoring of technology, finds that execeptional circumstances exist, and does not extend beyond the time the Authority deems necessary for the ETCs to complete network upgrades.

- 3. The following carriers are designated by this Authority as Eligible Telecommunications Carriers: Ardmore Telephone Company; BellSouth Telecommunications, Inc.; Century Telephone of Adamsville, Inc.; Century Telephone of Claiborne, Inc.; Century Telephone of Ooltewah Collegedale, Inc.; Citizens Telecommunications Company of Tennessee, LLC; Critzens Telecommunications Company of the Volunteer State, LLC; Concord Telephone Exchange, Inc.; Crockett Telephone Company; Humphreys County Telephone Company; Loretto Telephone Company; Millington Telephone Company; People's Telephone Company; Tellico Telephone Company; Tennessee Telephone Company; United Telephone Company; United Telephone Cooperative, Inc.; West Tennessee Telephone; Ben Lomand Rural Telephone Cooperative; Bledsoe Telephone Cooperative, Inc.; DeKalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; North Central Telephone Cooperative, Inc.; Skyline Telephone Membership Corporation; Twin Lakes Telephone Cooperative Corporation: Yorkville Telephone Cooperative; and West Kentucky Rural Telephone Cooperative, Inc.
- 5. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
- 6. Any party aggricved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals. Middle Section, within sixty (60) days from and after the date of this Order.

PHAIRMAN DIRECTOR

ATTEST:

XECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE September 18, 1997

IN RE: UNIVERSAL SERVICE GENERIC CONTESTED CASE **DOCKET NO. 97-00888**

ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS AND LIBRARIES PURSUANT TO SECTION 254(h) OF THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 97-157

This matter is before the Tennessee Regulatory Authority (the Authority) on its own motion at a regularly scheduled conference held on July 1, 1997, pursuant to 47 U.S.C. 254(h) of the Telecommunications Act of 1996 and Federal Communications Commission (FCC) Order 97-157. The purpose of this Order is to adopt the federal discount levels for intrastate telecommunications services. to permit schools and libraries in Tennessee to begin using the discounted services January 1, 1998, and to provide requisite State approval so that schools and libraries may begin applying for federal funding with the School and Libraries Corporation as soon as the applications are available. See the Supplemental Information attached to this Order. Question number 31, for details on the FCC Second Order on Reconsideration issued July 18, 1997.

Background for the Order

In February, 1996, the United States Congress passed the Telecommunications Act of 1996 ("Telco Act"). The Telco Act was enacted to further competition and reduce regulation for American telecommunications consumers. As a part of the Telco Act, a provision was made for preservation of Universal Service under § 254. Such preservation of Universal Service would provide a funding

mechanism to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a cost comparable to those in urban areas for similar services. The responsibility for implementing the Teleo Act was delegated to the FCC, and on May 8, 1997, the FCC issued its Report and Order, FCC Order No. 97-157 (Docket Number 96-45), implementing key portions of Section 254 of the Teleo Act which addresses universal service. The order concluded several things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications services for schools and libraries are among the items earmarked for federal funding.

The FCC Order provides for federal funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of discount levels no less than the federal discount levels for intrastate services. While the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1997, or as soon as the application is completed by the School and Library Corporation established by the National Exchange Carrier Association, Inc. We will address the adoption of intrastate discounts for schools and libraries in this Order. We have also attached, as a supplement to this Order, information from the FCC on questions which have been posed to them on the way the application process will work, how discounts will be applied, and who will administer the the federal fund distributions under the FCC Order. It should be noted that the competitive bidding requirement for eligible schools or libraries has been suspended for contracts covering services before December 31, 1998. Question number 31 in the Supplement on frequently asked questions attached to this Order, has the full text of the paragraph in the FCC decision on this exception.

¹ The paragraphs addressed are 424 through 606 of the Report and Order.

Discussion

In the Telco Act of 1996. Congress directed the FCC and the State Commissions to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural healthcare providers. The Telco Act of 1996 requires that states establish intrastate discounts on designated (but not limited to named) services provided eligible schools and libraries.²

While Section 254(h)(1)(B) of the Telco Act permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC states in paragraph 550 of its Order that the Telco Act does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts. No state funding is required for these intrastate discounts, as long as the FCC discount levels are adopted. The participating providers, such as a Local Exchange Carrier (LEC), referred to as "carriers" throughout the FCC Order, will be compensated for the discounts provided to schools and libraries completely through the federal universal service fund. It should be carefully noted that this funding is not supplemental to state funding, and that when the Federal funds for this purpose are exhausted, the State of Tennessee has no current plans to provide additional or supplemental funding. Adoption of the FCC funding plan does not, however, preclude the State of Tennessee from addressing funding to this program in the future.

² Specifically, the Act states: "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. 47 U. S.C. 254(h)(1)(B)."

The discounts range from 20 percent to 90 percent for all eligible telecommunications services, internet access, and internal connections, subject to a \$2.25 billion annual cap. The discounts are to be applied to a pre-discount price. That price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The pre-discount price is the total price that the providers such as a Local Exchange Carrier (LEC) would receive for the services they sell to schools and libraries. The schools and libraries would pay the carrier only the discounted rate, and the carrier would receive the amount of the discount from universal service support mechanisms. The FCC is not requiring a carrier to file new tariffs to reflect the discounts it has applied for schools and libraries, but rather, discounts will be applied to existing tariff rates where appropriate.

The range of discounts is correlated to students' eligibility for the national school free and reduced lunch program, and urban or rural location based on metropolitan statistical areas (MSAs). The following discount matrix has been adopted by the FCC:

Percent of Students Eligible	Discount Level			
	Schools in Category Estimated %	Urban Discount %	Rural Discount %	
<1	3	20	25	
1-19	31	40	50	
20-34	19	50	60	
35-49	15	6 0	7 0	
50-74	16	80	8 0	
75-100	16	9 0	90	

The pre-discount price is the price of most significance to providers of services to schools and libraries. The pre-discount price is also highly significant to schools and libraries because they must pay the undiscounted portion of the price. The FCC-believes that this will give-schools and libraries a strong incentive to secure the lowest pre-discount price.

⁴ In its Order, in Section 484, the FCC clarified that the tariffed rate of a carrier would represent a carrier's lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from the tariffed rate.

IT IS THEREFORE ORDERED THAT:

- 1. Upon consideration, we adopt the discount matrix contained in FCC Order No. 97-157, FCC Docket 96-45, and represented in this Order for purposes of permitting schools and libraries to receive federal funding. By adopting this matrix, we do not waive the right to file an appeal on matters contained in the FCC Order with the appropriate court of law or other entity.
- 2. That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
- That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

Gara

ATTEST:

EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

IN RE: UNIVERSAL SERVICE GENERIC CONTESTED CASE))) DOCKET NO. 97-00888))
---	---

ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS AND LIBRARIES PURSUANT TO SECTION 254(h) OF THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 97-157 SUPPLEMENTAL INFORMATION

Frequently Asked Questions on Universal Service and the Snowe-Rockefeller-Exon-Kerrey Amendment Released July 2, 1997 by the Federal Communications Commission.

On May 8, 1997, the Federal Communications Commission (Commission) released a Report and Order on Universal Service. Section 254(h) of the Telecommunications Act of 1996, better known as the Snowe-Rockefeller-Exon-Kerrey Amendment, states that schools and libraries should have access to telecommunications services for educational purposes at discounted rates.

I. Eligibility for Universal Service Discounts

#1 Q: Which schools are eligible to receive discounts?

A: The Commission concluded that, to be eligible for universal service discounts, a school must meet the statutory definition of an elementary or secondary school found in the Elementary and Secondary Education Act of 1965, must not operate as a for-profit business, and must not have an endowment exceeding \$50 million. Both public and non-public elementary and secondary schools that meet these criteria, will be eligible to receive discounts on eligible services.

#2 Q: Which libraries are eligible to receive discounts?

A: The Commission concluded that, to be eligible for universal service discounts, a library must operate as a not-for-profit business and must be eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA). In addition, while the definition of library in the LSTA includes public libraries, public elementary or secondary school libraries, academic libraries, research libraries that are not affiliated with an

institution of higher education, and private libraries subject to state determination, the Commission concluded that a library's eligibility for universal service discounts funding will depend on its funding as an independent entity. "Independent" means that the budget of the library must be completely separate from that of any institution of learning. For example, because institutions of higher education are not eligible for universal service discounts, an academic library will only be eligible if its funding is completely separate from the funding of any institution of higher education. On the other hand, a library within an eligible school will be entitled to receive discounted services as part of the school.

- #3 Q: Will eligible schools and libraries applying for discount funding be allowed to aggregate their demand for telecommunications service with others?
 - A: Yes. The Commission encourages eligible schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and negotiate lower rates. It is important to note that entities not eligible for universal service discounts will benefit from lower pre-discount prices from such aggregation, but they will not be permitted to gain eligibility for discounts by participating in consortia with those who are eligible. Clearly, this will place responsibility on consortia to keep careful records of their expenses so that only the eligible entities receive the discounts.
- #4 Q: With whom will eligible schools and libraries be permitted to aggregate demand?
 - A: Eligible schools and libraries may aggregate demand with other eligible schools and libraries, rural health care providers, public sector (governmental) entities, and/or private sector entities. Schools and libraries that join consortia composed only of other schools and libraries, rural health care providers, and public sector (governmental) entities may, under the Communications Act, receive below tariff rates on any eligible tariffed services they order. Eligible schools and libraries participating in consortia that include private sector entities may receive a universal service discount only if any interstate services that such consortia receive from incumbent local exchange carriers are provided at generally tariffed rates.

II. Services and Functionalities Eligible for Discounts

- #5 Q: What services and functionalities did the Commission find eligible for discounts?
 - A: Eligible schools and libraries will be able to purchase all commercially available telecommunications services, Internet access, and internal connections at discounted rates.
- #6 Q: What does the Commission mean by "all commercially available telecommunications services"?
 - A: Because the Commission wanted to ensure that schools and libraries have maximum flexibility to purchase different packages of services at a discount, the Commission did not recommend a standard telecommunications package, but concluded that it would be more

efficient to let schools and libraries determine what services they need and want. The Order allows schools and libraries to choose from a wide array of telecommunications services and technologies, including, for example, basic telephone service, a T-1 line, and wireless telecommunications services.

#7 Q: What did the Commission decide about schools' and libraries' use of the Internet?

A: The Commission concluded that eligible schools and libraries should receive discounts on non-content Internet access, which includes electronic mail (e-mail). Discounts will not apply to the "content" that some information service providers bundle in a package with Internet access, unless such a bundled service would be the most cost-effective conduit to the Internet. For example, eligible schools and libraries will not receive discounted access to an Internet subscription service unless the Internet gateway it provides is the most cost-effective way for them to access the Internet.

#8 Q: What components of internal connections will be eligible for discounts?

A: The Commission concluded that both installation and maintenance of internal connections should be eligible for discounts. Eligible schools and libraries may select both the technology and provider that best meet their needs. For example, eligible schools and libraries may select wireline, wireless, or cable technology provided by either a telecommunications carrier or a non-telecommunications carrier. The Commission specifically noted that equipment needed to transport information within a school or library should be eligible for discounts, including routers, hubs, network file servers (including the necessary software), and wireless local area networks (LANs).

#9 Q: What services will not be eligible for universal service discounts?

A: Equipment such as computers (with the exception of network file servers) and other hardware, software (with the exception of the software required for the operation of network file servers), fax machines, modems, teacher training, upgrades to the electrical system, and asbestos removal will not be eligible for discounts.

III. Discounts

#10 Q: What are the levels of discount for which eligible schools and libraries may apply?

A: The Commission established a matrix that will provide discounts ranging from 20% to 90% on all commercially available telecommunications services, Internet access, and internal connections. The level of discount will be based on a school's or library's level of economic disadvantage and its location in an urban or rural area. Here is the Commission's discount matrix:

Percent of Students Eligible	Discount Level		
	Schools in Category Estimated %	Urban Discount %	Rural Discount %
<]	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	7 0
50-74	16	80	80
75-100	16	90	90

#11 Q: How will a school's level of economic disadvantage be determined?

A: A school's level of economic disadvantage will be defined by the percentage of its students eligible for either a free or reduced price lunch under the national school lunch program. That is, a school will determine the percentage of its students whose family income falls within 185% of the poverty line. It is important to note that schools need not participate in the national school lunch program in order to compute their level of economic disadvantage for purposes of applying for universal service discounts. A school that either does not participate in the national school lunch program or that experiences a problem with undercounting eligible students may use federally approved alternative mechanisms to determine the percentage of their students eligible for the school lunch program. A description of federally approved alternative mechanisms can be found at 34 C.F.R. § 200.28(a)(2)(i)(B). For example, a school may choose to conduct a survey or use eligibility for a tuition scholarship program to determine the percentage of its students eligible for the national school lunch program for purposes of applying for universal service discounts.

#12 Q: How will a library's level of economic disadvantage be determined?

A: A library's level of economic disadvantage will be based on the percentage of students eligible for the national school lunch program in the school district in which the library is located.

#13 Q: Will each individual school and library be required to apply for discounted services separately and submit its percentage of students eligible for the national school lunch program to the universal service administrator?

A. No. If a state, group of schools or libraries, or a school district applies for discounted services on behalf of its schools, the procurement officer must certify to the universal service administrator the percentage of students in each of its schools that is eligible for the national school lunch program. The school district or the state may decide to compute the discounts on an individual school basis or it may decide to compute an average discount. (See question 14.) In

either case, the state or the district should strive to ensure that each school receives the full benefit of the discount to which it is entitled. Similarly, libraries ordering discounted services at the library system level must certify to the percentage of students—eligible for the national school lunch program in each of the school districts in which its branches—are located. The library system may compute discounts on either an individual branch basis or based on an average of all branches within the system, but should strive to ensure that each branch receives the discount to which it is entitled.

- #14 Q: How will a school district or a state ordering services on behalf of its eligible schools calculate an average discount?
- A: The school district or state will determine the number of students eligible for the school lunch program and will divide that number by the total number of students in the school district or state. This calculation will yield the district-wide or state-wide level of poverty. The school district or the state will then consult the discount matrix to determine the level of discount to which it is entitled.
- #15 Q: If a library system orders services on behalf of its branches and has branches located in different school districts, how will that library system calculate an average discount?
- A: The library system will determine the discount to which each of the school districts in which its branches are located is entitled. The library system will then add the discount percentages and divide by the number of branches, which will yield the system-wide discount percentage.
- #16 Q: How will an eligible school or library determine whether it is located in an urban or a rural area for purposes of applying for universal service discounts?
- The Commission concluded that, for purposes of the schools and libraries discount program, rural areas should be defined in accordance with the definition adopted by the Department of Health and Human Services Office of Rural Health Policy (ORHP/HHS). ORHP/HHS uses the Office of Management and Budget's Metropolitan Statistical Area (MSA) designation of metropolitan and non-metropolitan counties, adjusted by the most recent Goldsmith Modification, which identifies rural areas within large metropolitan counties. Both the list of MSAs and the Goldsmith Modification will be posted on the Common Carrier Bureau's education webpage the FCC's (www.fcc.gov/ccb) and on homepage (www.fcc.gov/learnnet).
- #17 Q: How will the discount program actually work? Who will receive funds from the universal service administrator?
- A: Schools and libraries will only be required to pay the portion of their bill remaining after the discount has been applied. For example, a school that is eligible to receive a 60% discount will be required to pay only 40% of the bill. It will be up to the service providers providing

discounted services to apply for reimbursement of the remaining 60% of the bill from the universal service administrator.

IV. Funding

- #18 Q: How much money will be available each year for the schools and libraries discount program?
- A: The Commission concluded that there should be an annual cap of \$2.25 billion on universal service expenditures for eligible schools and libraries.
- #19 Q: What is the funding year for the schools and libraries program?
 - A: The funding year will be the calendar year.
- #20 Q: What is the source of the money used to pay for universal service discounts?
- A: All telecommunications carriers that provide interstate telecommunications services are required to contribute to universal service support mechanisms. Telecommunications carriers required to contribute will receive bills from the universal service administrator; their assessments for the schools and libraries discount program will be based on their interstate and intrastate end-user telecommunications revenues.
- #21 Q: How will the universal service administrator know how much money to collect for the schools and libraries program?
- A: Because the schools and libraries program is new and demand cannot be predicted with certainty, the Commission concluded that collection should be based on demand as that demand becomes known.
- #22 Q: How will collection and spending for schools and libraries work in the first year of the program?
- A: The Commission concluded that collection and spending for the period through June, 1998, should be limited, in light of both the need to implement the necessary administrative processes and the need to make the fund sufficiently flexible to respond to demand. That is, the Commission directed the universal service administrator to collect \$100 million per month during the first quarter of 1998 and up to \$700 million in the second quarter. The Commission also stated that the universal service administrator could collect up to \$1.25 billion in the last half of 1998.
- #23 Q: How will collection and spending for schools and libraries work in subsequent years of the program?

A: Collection and spending for the universal service discount program will continue to depend upon demand for amounts under the \$2.25 billion annual cap. The Commission directed the universal service administrator to report on a quarterly basis to the Commission on two aspects of universal service: (1) the total amount of payments made to service providers providing eligible services to schools and libraries at a discount; and (2) the administrator's determination of funding requirements necessary to meet projected demand for the next quarter. Both of these reporting requirements will help the administrator and the Commission gauge the level of demand for schools and libraries universal service funding.

#24 Q: What happens if demand in a particular year falls below the annual cap of \$2.25 billion?

A: The Commission stated that, if less than \$2.25 billion is spent in calendar year 1998, no more than half of the unused portion can be spent in calendar year 1999. If the amount allocated in calendar years 1998 and 1999 is not spent, no more than half of the unused portion for those two years can be spent in calendar year 2000.

#25 Q: What happens if demand in a particular year exceeds the annual cap of \$2.25 billion?

A: If during any given year only \$250 million remains available for funding discounts, a priority system will go into effect under which the most disadvantaged schools and libraries that have not yet requested universal service funding will have first priority for remaining funds. If the \$250 million trigger is reached, the universal service administrator will ensure that a message is posted on the administrator's website, notify the Commission, and take reasonable steps to notify the educational and library communities that commitments for allocating the remaining \$250 million will be made only to the most disadvantaged schools and libraries for the next 30 days (or the remainder of the funding year, whichever is shorter). That is, during the 30-day period, applications from schools and libraries will continue to be accepted and processed, but the administrator will only commit funds to support discount requests from schools and libraries that are in the two most-disadvantaged categories of the discount matrix and that did not receive universal service discounts in the previous or current funding years. To avoid discouraging schools and libraries from applying for discounts on basic telephone service, however, schools and libraries that are in the two most-disadvantaged categories will not forfeit their priority status if they have previously applied only for discounted basic telephone service.

#26 Q: What happens if funds still remain after the initial 30-day period has elapsed?

A: If uncommitted funds still remain after the initial 30-day period, pending requests from schools and libraries in the two most disadvantaged categories that have previously received universal service discounts will be honored. If funds still remain, the administrator will allocate the remaining available funds to schools and libraries in the order that their requests were received until the \$250 million is exhausted or the funding year ends.

V. Restrictions Imposed on Schools and Libraries

- #27 Q. Are eligible schools and libraries permitted to resell the discounted services they receive?
- A: No. The Act bars schools and libraries from reselling services purchased pursuant to a universal service discount, and the Commission concluded that the Act should be interpreted to restrict any resale of services purchased under the universal service discount program to entities that are not eligible for support. The Commission also concluded that this prohibition on resale does not prohibit an eligible school or library from charging fees for any services that schools or libraries purchase for which they receive no universal service discounts. For example, an eligible school or library may assess computer lab fees to help defray the cost of computers or training fees to cover the cost of training teachers or library personnel because neither of these purchases are subject to universal service discounts.

VI. Applying for Discounts

- #28 Q: What must schools and libraries do before applying for discounted services?
- A: Schools and libraries must prepare technology plans covering both the near term and the future. Technology plans should specify how schools and libraries plan to integrate the use of these technologies into their curriculum. The Commission concluded that, to ensure that these technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program, the plans must receive independent approval, ideally by a state agency that oversees schools or libraries. In addition, the Commission is working with the U.S. Department of Education to develop alternative approval procedures.
- #29 Q: If a school or library has a technology plan that has already been approved for another purpose, will that school or library have to go through another approval process?
- A: No. Plans that have been approved for other purposes, e.g., for participation in federal or state programs such as "Goals 2000" or the Technology Literacy Challenge, will be accepted without need for further independent approval.
- #30 Q: What do states have to do before their schools and libraries may apply for discounted services?
- A: Before their schools and libraries are eligible to apply for discounted services, states must adopt a discount matrix for intrastate services with entries at least equal to those in the discount matrix for interstate services adopted by the Commission. It is important to note, however, that the federal universal service support mechanism will pay for schools' and libraries' discounts on both intrastate and interstate services.
- #31 Q: How will schools and libraries apply for discounted services?*
- A: Schools and libraries will be required to participate in a competitive bidding process in order to apply for discounted services. Schools and libraries will be required to complete an

application which will include a description of the services requested, self-certification of the percentage of students eligible for the national school lunch program, and self-certification that the school or library is eligible to participate in the universal service discount program and that it will not resell any discounted services. The completed application will be submitted to the universal service administrator, who will post it on a website dedicated exclusively to this purpose. Competing providers will then have the opportunity to bid on the schools' and libraries' descriptions of services. Schools and libraries will be required to wait four weeks after their applications are posted on the website before they may sign contracts with their chosen service providers.

*On July 10, 1997, the FCC issued an Order on Reconsideration in Docket Number 96-45. This reconsideration addressed the May 8, 1997, Universal Service Report and Order. In paragraph 2 the Order on Reconsideration stated:

With respect to schools and libraries, we conclude that an eligible school or library is not required to comply with the competitive bidding requirement for any contract telecommunications services that it signs after November 8, 1996 and before the competitive bidding system is operational, but only if that contract covers only services provided the eligible school or library before December 31, 1998. We also conclude that an eligible school may not receive a federal universal service discount on services provided to it before 1998. In addition, we determine that the Commission will consult the members of the State Joint Board in FCC Docket No. 96-45 (96-45 Joint Board) before adopting any change in the discount matrix for schools and libraries.

**On July 18, 1997, the FCC issued a <u>Second Order on Reconsideration</u> in Docket Number 96-45. This reconsideration addressed the May 8, 1997, Universal Service Report and Order. In paragraph 57 the <u>Second Order on Reconsideration</u> stated:

As noted above, we reconsider, on our own motion, our decision to require [the]¹ administrator to select a subcontractor to manage the application process for eligible libraries and instead direct NECA (National Exchange Carrier Association, Inc.) to incorporate two not-for-profit, unaffiliated corporations which will be responsible for administering the schools and libraries and rural health care [funding programs] except for those matters directly relating to billing, collection and [distribution] of funds. Specifically, we conclude that the structure and carefully delineated respon[sibilities of] the corporations, as set forth herein, will provide for greater accountability and administration of the schools and libraries and rural health care programs than woul[d the] approach adopted earlier because a subcontractor, unlike the Corporations, would not [be] accountable to the Commission.—Accordingly, as soon as possible following release off this] Order, NECA shall incorporate the Corporations as unaffiliated, not-for-profit corpo[rations under] the laws of Delaware. The Corporations shall be designated

¹ Original text was lost in downloading and printing. Words have been inserted for the sake of clarity.

the Schools and Libraries' Corporation and Rural Health Care Corporation. NECA initially shall establish the S[chools and] Libraries and Rural Health Care Corporations and then take such steps as are necessa[ry and] appropriate under Delaware and federal law to make the Corporations independent of, [and] unaffiliated with, NECA and USAC. We direct NECA to submit to the Commission for approval the proposed articles of incorporation, bylaws, and any documents necessary [to] incorporate the Corporations by August 1, 1997, in order to permit us to determine NECA's establishing the Corporations whether the requirements of this Order have bee[n] satisfied.

- #32 Q: Is there any limit on the amount that service providers can charge eligible schools and libraries for services eligible for universal service discounts?
- A: Yes. The Commission called the amount that service providers charge to schools and libraries prior to the application of a discount, the "pre-discount price." The Commission concluded that the pre-discount price cannot exceed the lowest price charged to similarly situated non-residential customers ("lowest corresponding price"). Carriers may not be selected to be a school's or library's provider of discounted services if the carriers submit bids higher than the lowest corresponding price. In areas in which there is no competition (i.e., only one provider), this lowest corresponding price would be the pre-discount price.
- #33 Q: How does the Commission suggest resolving disputes over the lowest corresponding price that may arise between providers and schools or libraries?
- A: The Commission concluded that schools or libraries should be allowed to seek recourse from the Commission if a complaint involves interstate rates, and from a state commission if a complaint involves intrastate rates.
- #34 Q: Will the Commission's competitive bidding process take the place of state and local competitive bidding requirements?
- A: No. The submission of a description of services for posting on the administrator's website is in no way intended as a substitute for state, local, or other procurement processes.
- #35 Q: How detailed a description of services must a school or library submit?
- A: The Commission will require schools and libraries to submit descriptions of services that are detailed enough to allow providers to evaluate reasonably the requests and submit bids. This approach is consistent with the Commission's efforts to ensure that all eligible schools and libraries have the opportunity to participate in the universal service discount program. Schools and libraries may, however, submit formal and more detailed requests for proposals (RFPs), if that is required or is most consistent with their own state or local procurement requirements.
- #36 Q: Who is preparing the applications that schools and libraries will submit to the universal service administrator?

- A: The Commission is working with the U.S. Department of Education and the states to design the schools and libraries applications.
- #37 Q: Must schools and libraries apply for discounts each year?
- A: Yes. In order to ensure that the greatest number of schools and libraries are able to participate in the universal service discount program, the Commission concluded that schools and libraries should be required to apply each year to participate in the program.

VII. Implementation

- #38 Q: When can schools and libraries begin applying for discounted services?
- A: For this first year of the program, applications for discounted services will be accepted as soon as the schools and libraries website is open and the applications are available.
- #39 Q: Does that mean that schools and libraries will not be able to submit applications beginning on July 1st of this year?
- A: Yes. The Commission stated that, generally, schools and libraries will not be able to apply before July 1st for funding that will become available on the following January 1st. This requirement was designed to ensure that the first come, first served process proceeds smoothly from year to year. For this first year of the program, however, administrative structures must be put in place before applications can be accepted. In addition, the Commission is currently working with the U.S.Department of Education to design the schools and libraries applications. The date on which applications will become available is still undetermined.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE November 7, 1997

IN RE: UNIVERSAL SERVICE GENERIC CONTESTED CASE **DOCKET NO. 97-00888**

ORDER ESTABLISHING PROCEDURES FOR LIFELINE CONSENTS PURSUANT TO SECTION 214(e) OF THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 97-157

This matter came before the Tennessee Regulatory Authority (the Authority) upon its own motion at a regularly scheduled conference held on October 21, 1997, pursuant to 47 U.S.C. § 214(e) of the Telecommunications Act of 1996 and Federal Communications Commission (FCC) Order 97-157. The purpose of this Order is to authorize the reduction of intrastate rates to the end-user.

Background for the Order

In February, 1996, the United States Congress passed the Telecommunications Act of 1996 ("Telco Act"). The Telco Act was enacted to further competition and reduce regulation for American telecommunications consumers. As a part of the Telco Act, a provision was made for preservation of Universal Service under § 254. Such preservation of Universal Service would provide a funding mechanism to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a cost comparable to those in urban areas for similar services. The responsibility for implementing the Telco Act was delegated to the FCC, and on May 8, 1997, the FCC issued its Report and Order, FCC Order No. 97-157 (Docket Number 96-45), implementing key portions of Section 254 of the Telco Act which addresses Universal Service. The order concluded several things, including identification of services

¹ The paragraphs addressed are 424 through 606 of the Report and Order.

to be supported by Federal Universal Service funding and the mechanisms whereby such funding will be provided. An increase in Federal Lifeline support is among the items earmarked for Federal funding.

Discussion

In the Telco Act, Congress directed the FCC and the State Commissions to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural healthcare providers. The FCC Order provides that Lifeline customers will receive \$3.50 in Federal support without a state matching requirement, beginning January 1, 1998. In states which accept an equivalent reduction (\$1.75) in the portion of intrastate local rates paid by the end-user, Lifeline customers will receive an additional \$1.75 in Federal support bringing the Federal contribution to \$5.25. The current state Lifeline discount of \$3.50 meets the requirements necessary to receive an additional \$1.75 in Federal support, which brings the total Federal support to \$7.00. Public Notice DA 97-1892 (Attachment A) specifies that the additional \$1.75 of Federal support will not be provided until the states inform the Universal Service Administrative Company ("USAC"), Sheryl Todd of the FCC, and the Office of the Secretary of the FCC that they have accepted the equivalent \$1.75 reduction of intrastate local rates. The Authority will notify the USAC, the Secretary of the FCC and Ms. Sheryl Todd of the FCC pursuant to Public Notice DA 97-1892 in a one page letter, by December 31, 1997, that the Authority accepts the \$1.75 reduction in the portion of intrastate local rates paid by end-users (Attachment B).

The Authority authorized the \$1.75 reduction in the portion of intrastate rates paid by end-users to obtain the \$5.25 in Federal Lifeline support; and discussed provisions that the FCC be notified that the State of Tennessee will continue to provide \$3.50 in state support to receive the one half (1/2) Federal match of \$1.75, to receive total Federal support of \$7.00; and that the intrastate Lifeline support when combined with the Federal Lifeline support shall not exceed the total of the subscriber line charge and the applicable local service rate charged to a Lifeline customer.

IT IS THEREFORE ORDERED THAT:

- 1. Upon consideration, the Authority accepts the equivalent \$1.75 reduction in the portion of intrastate local rates paid by end-users to obtain the \$5.25 in Federal support.
- The Authority will notify the USAC, the Secretary of the FCC and Ms. Sheryl Todd of the FCC pursuant to Public Notice DA 97-1892 in a one page letter, by December 31, 1997, that the Authority accepts this \$1.75 reduction in the portion of intrastate local rates paid by end-users. By adopting this reduction, the Authority does not waive the right to file an appeal on matters contained in the FCC Order with the appropriate court of law or other entity.
- 2. The Authority will notify the FCC that the State of Tennessee will continue to provide \$3.50 in state support to receive the one half (1/2) Federal match of \$1.75, therefore, to receive total Federal support of \$7.00
- 3. The intrastate Lifeline support when combined with the Federal support shall not exceed the total of the subscriber line charge and the applicable local service rate charged to a Lifeline customer.
- 4. Any party aggricued with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
- 5. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

ATTEST:

FE PUBLIC NOTICE

Federal Communications Commission 1919 - M Street, N.W. Washington, D.C. 20554 News media information 202 / 418-0500 Fax-On-Demand 202 / 418-2830 Internet: http://www.fcc.gov ftp.fcc.gov

Approved by OMB 3060-0793 Expires 03/31/98 Avg. burden hours per response: 1.25 hours

> DA 97-1892 Released September 29, 1997

COMMON CARRIER BUREAU ANNOUNCES PROCEDURES FOR STATES REGARDING LIFELINE CONSENTS, ADOPTION OF INTRASTATE DISCOUNT MATRIX FOR SCHOOLS AND LIBRARIES, AND DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS

On May 8, 1997, the Commission released Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157 (Order). In that Order, the Commission adopted rules providing funding for discounts to eligible schools and libraries and support for low-income customers. The Commission also adopted rules mandating that state commissions designate common carriers as eligible telecommunications carriers for service areas selected by state commissions in accordance with section 214(e). In this public notice, the Common Carrier Bureau announces procedures that states must follow in order to receive universal service support.

Liseline. In the Order, the Commission concluded that a revised Liseline program shall be available in all states. The Commission held that Lifeline customers will receive \$3.50 in federal support without a matching requirement, beginning January 1, 1998. In states that accept an equivalent reduction in the portion of intrastate local rates paid by the end-user, Liseline customers will receive an additional \$1.75 in federal support above the current \$3.50 level. In addition, the Commission will provide federal support equal to one half of any support generated by state commission action, up to a maximum of an additional \$1.75 in federal support, provided that the state commission approves this additional reduction in local service rates charged to Lifeline customers. To accept increased Lifeline support, states must send a one-page letter authorizing the reduction of intrastate rates to the Universal Service Administrative Company (USAC). A copy of the letter must also be sent to Sheryl Todd and the Office of the Secretary at the Federal Communications Commission. Letters must be received by the Office of the Secretary by December 31, 1997 to be eligible for increased support beginning January 1, 1998. States may file the letter after December 31, 1997 but those states' Lifeline customers will not be eligible for increased support beginning January 1, 1998. The purpose of this letter is simply to notify the Commission that a state approves the reduction in the portion of the intrastate rate paid by the Lifeline customer. In a separate filing sent to the Administrator by December 31, 1997,

state commissions or carriers must elemonstrate that the carrier's Lifeline plan complies with the Commission's rules and state the number of qualifying low-income consumers and the amount of state assistance (see 47 C.F.R. § 54.401(d)).

Schools and Libraries. As a condition of eligibility for federal universal service support for schools and libraries in a state, the Commission concluded that each state must adopt an intrastate discount matrix with entries at least equal to those of the interstate discount matrix. To notify the Commission that a compliant intrastate discount matrix for schools and libraries has been adopted, states must send a one-page letter to USAC stating this fact. A copy of the letter must also be sent to Sheryl Todd and the Office of the Secretary at the Federal Communications Commission. States should include a copy of the adopted intrastate discount matrix. Letters regarding the discount matrix must be received by the Office of the Secretary by December 31, 1997 to be eligible for funding beginning January 1, 1998.

Eligible Telecommunications Carriers. Section 214(e)(2) requires state commissions, either upon their own motion or upon request, to designate common carriers as eligible telecommunications carriers for service areas selected by the state commission. In addition, states must designate areas served by non-rural carriers. USAC will need the names of eligible telecommunications carriers and designated service areas for non-rural carriers in order to administer the universal service programs. Therefore, states should submit a list of eligible telecommunications carriers and the service areas that non-rural carriers are required to serve as soon as possible and in no event later than December 31, 1997, in order for carriers to be eligible for funding for high cost, low-income, and health care support, beginning January 1, 1998, except as set forth in 47 C.F.R. §54.621(a). Copies of the information must also be sent to Sheryl Todd and the Office of the Secretary at the Federal Communications Commission.

All correspondence addressed to USAC should be mailed to: 100 South Jefferson Rd., Whippany, N.J. 07981. All correspondence addressed to Sheryl Todd should be mailed to: Federal Communications Commission, Universal Service Branch, CC Docket No. 96-45, 8th Floor, 2100 M Street, N.W., Washington, D.C. 20554. All correspondence addressed to the Office of the Secretary should be mailed to: CC Docket No. 96-45, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact: Kim Parker (202) 418-7393.

Paperwork Reduction Act Requirement

The Telecommunications Act of 1996 directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. In the Report and Order on Universal Service (released May 8, 1997), the Commission adopted rules that are designed to implement the universal—service provision of section 254. States must send a letter authorizing the reduction of intrastate rates Each state must adopt an intrastate discount matrix with entries at least equal to those of the interstate discount matrix and send a notification letter indicating that it has done so. States must submit a list of carriers designated as eligible telecommunications carriers and the service areas such non-rural carriers are required to serve. All the

10 03 97 15:50.31

requirements are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support.

We have estimated that each response to this collection of information will take, on average, 1.25 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications. Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-0793). We will also accept your comments via the Internet if you send them to jboley@fcc gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Remember — You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0793.

This notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. Section 552a(e)(3) and the paperwork Reduction Act of 1995, P.L. 104-13, October 1, 1995, 44 U.S.C. 3507."

TENNESSEE REGULATORY AUTHORITY

Lynn Greer, Chairman Sara Kyle, Director Melvin Malone, Director



460 James Robertson Parkway Nashville, Tennessee 37243-0505

November 7, 1997

Administrator Universal Service Administrative Company 100 South Jefferson Road Whippany, NJ 07981

Attachment B

Re: Notification required by Public Notice DA97-1892 of acceptance by the State of Tennessee of the \$1.75 reduction in the portion of intrastate rates paid by end users.

Dear Sir or Madam:

This letter is to advise you that on October 21, 1997, the Tennessee Regulatory Authority ("Authority") met in a regularly scheduled Conference. At the Conference the Authority accepted the \$1.75 reduction in the portion of intrastate rates paid by end users to obtain the \$5.25 in Federal Lifeline support. The Authority also Ordered that the FCC be notified that the State of Tennessee will continue to provide \$3.50 in state support to receive the 1/2 Federal match of \$1.75. Further, that the intrastate Lifeline support when combined with the Federal Lifeline support shall not exceed the total of the subscriber line charge and the applicable local service rate charged to a Lifeline customer.

Sincerely,

Director

cc: Office of the Secretary

Federal Communications Commission

1919 M Street, NW

Room 222

Washington, D.C. 20554

Ms. Shorvi Todd

Federal Communications Commission

Director

2100 M Street, NW

Room 8611

Washington, D.C. 20554

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE November 3, 1997

IN RE: UNIVERSAL SERVICE GENERIC CONTESTED CASE **DOCKET NO. 97-00888**

ORDER ESTABLISHING PROCEDURES FOR SELF-CERTIFICATION OF RURAL TELEPHONE COMPANIES PURSUANT TO SECTION 153(37) OF THE COMMUNICATIONS ACT, AS AMENDED, AND FCC ORDER 97-157

This matter came before the Tennessee Regulatory Authority (the Authority) upon its own motion at a regularly scheduled conference held on October 21, 1997, pursuant to 47 U.S.C. § 153(37) of the Communications Act, as amended, and Federal Communications Commission (FCC) Order 97-157 and Public Notice DA97-1748(as corrected). Attached as Exhibit 1. The purpose of this Order is to establish uniform procedures for self-certification of rural telephone companies.

Background for the Order

In February, 1996, the United States Congress passed the Telecommunications Act of 1996 ("Telco Act"). The Telco Act was enacted to further competition and reduce regulation for American telecommunications consumers. As a result of the passage of the Telco Act. Congress delegated the responsibility for Universal Service to the FCC. The resulting Universal Service Order, FCC 97-157, established that, beginning January 1, 1999, rural and non-rural local exchange carriers (LECs) would receive federal universal service support determined by separate mechanisms. In the Universal Service Order, the FCC stated that in order for a LEC to be considered a rural carrier, it must meet the definition of a rural telephone company in Section 3(37) of the Communications Act, as amended (47 U.S.C. § 153(37)).

Discussion

In the Telco Act, Congress directed the FCC and State Commissions to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. Section 3(37) of the Communications Act, as amended, states that the term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity:

- (A) provides common carrier service to any local exchange carrier study area that does not include either:
- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
- (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993:
- (B) provides telephone exchange service, including exchange access to fewer than 50,000 access lines:
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Under provisions of Public Notice DA97-1748(as corrected), any LEC that seeks to be classified as a rural carrier must file a letter, with the FCC, by April 30th of each year, notifying the FCC that the LEC certifies itself to be a rural telephone company and explaining how the carrier meets at least one of the four criteria in the statutory definition. The carrier should also file information supporting its explanation, for example, the number of lines the carrier serves, and state whether it is certified as a rural carrier in its state. The Authority does not certify rural carriers, and applicants should so inform the FCC. All self-certifications will be subject to random verifications of the information provided at any time.

By June 30th of each year, the FCC will acknowledge receipt of the carrier's self-certification as a rural carrier. The FCC will also send the list of carriers certified as rural telephone companies to the Universal Service Administrator by July 31st of each year. If a carrier's status changes so that it becomes

ineligible for certification as a rural carrier, that carrier must inform the FCC and the Universal Service.

Administrator within one month of the change in status.

The notifications of self-certification as a rural telephone company must be sent by April 30th of each year to Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Federal Communications Commission, 2100 M. St., N.W., 8th Floor, Washington, D.C. 20554.

IT IS THEREFORE ORDERED THAT:

- 1. Any carriers seeking certification as a Rural Telephone Company must file a copy of its FCC self-certification letter (due to the FCC each April 30th) with the Authority.
- 2. Any carrier notifying the Universal Service Administrator of a change in eligibility as a rural carrier, must file a copy of that notification with this Authority.
- 3. Any party aggricved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
- Any party aggricved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

CHAIRMAN

DIRECTOR

.

ATTEST:

EXECUTIVE SECRETARY



Exhibit 1

Federal Communications Commission 1919 - M Street, N.W. Washington, D.C. 20554 News media information 202 / 418-0500 Fax-On-Demand 202 / 418-2830 Internet: http://www.fcc.gov ftp.fcc.gov

> Released September 22, 1997 DA 97 1748

Approved by OMB 3060-0793 Expires 03/31/98 Avg. burden bours per response: 1.25 hours

SELF-CERTIFICATION AS A RURAL TELEPHONE COMPANY Correction

The Universal Service Order, FCC 97-157 (rel. May 8, 1997), established that, beginning January 1, 1999, rural and non-rural local exchange carriers (LECs) would receive federal universal service support determined by separate mechanisms. Although non-rural LECs will begin receiving federal support based on a forward-looking economic cost mechanism in 1999, rural LECs will continue to receive universal service support, from federal universal service mechanisms, based on their embedded costs at least until 2001. In the Universal Service Order, the Commission stated that in order for a LEC to be considered a rural carrier, it must meet the definition of a rural telephone company in section 3(37) of the Communications Act, as amended (47 U.S.C. § 153(37)).

Section 3(37) states that the term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

- (A) provides common carrier service to any local exchange carrier study area that does not include either—
 - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Any LEC that seeks to be classified as a rural carrier must, by April 30 of each year, file a letter with the Commission notifying the Commission that the LEC certifies itself to be a rural telephone company and explaining how the carrier meets at least one of the four criteria in the statutory definition. The carrier should also file information supporting its explanation, for example, the number of lines the carrier serves, and state whether it is certified as a rural carrier in its state. All self-certifications will be subject to random verifications of the information provided at any time.

By June 30 of each year, the Commission will acknowledge receipt of the carrier's self-certification as a rural carrier. The Commission will also send the list of carriers certified as rural telephone companies to the Universal Service Administrator by July 31st of each year. If a carrier's status changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Universal Service Administrator within one month of the change in status.

The notifications of self-certification as a rural telephone company must be sent by April 30 of each year to the Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Federal Communications Commission, 2100 M. St, N.W., 8th Floor, Washington, D.C. 20554; 202/418-7400.

The Telecommunications Act of 1996 directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. In the Report and order on Universal Service (released May 8, 1997), the Commission adopted rules that are designed to implement the universal service provision of section 254. Any local exchange carrier that seeks to be classified as a rural telephone company must file a letter with the Commission annually notifying the Commission that the LEC certifies itself to be a rural telephone company and explaining how the carrier meets at least one of the four criteria. If a LEC's status changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Universal Service Administrator within one month of the change in status. All the requirements are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support.

We have estimated that the response to this collection of information will take, on average, 1.25 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-0793). We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Remember — You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0793.

This notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. Section 552a(e)(3) and the paperwork Reduction Act of 1995, P.L. 104-13, October 1, 1995, 44 U.S.C. 3507."

F PUBLIC NOTICE

Federal Communications Commission 1919 - M Street, N.W. Washington, D.C. 20554 News media information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
Internet: http://www.fcc.gov
ftp.fcc.gov

Released August 14, 1997 DA 97 1748

SELF-CERTIFICATION AS A RURAL TELEPHONE COMPANY

The Universal Service Order, FCC 97-157 (rel. May 8, 1997), established that, beginning January 1, 1999, rural and non-rural local exchange carriers (LECs) would receive federal universal service support determined by separate mechanisms. Although non-rural LECs will begin receiving federal support based on a forward-looking economic cost mechanism in 1999, rural LECs will continue to receive universal service support, from federal universal service mechanisms, based on their embedded costs at least until 2001. In the Universal Service Order, the Commission stated that in order for a LEC to be considered a rural carrier, it must meet the definition of a rural telephone company in section 3(37) of the Communications Act, as amended (47 U.S.C. § 153(37)).

Section 3(37) states that the term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

- (A) provides common carrier service to any local exchange carrier study area that does not include either—
 - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Any LEC that seeks to be classified as a rural carrier must, by April 30 of each year, file a letter with the Commission notifying the Commission that the LEC certifies itself to be a rural telephone company and explaining how the carrier meets at least one of the four criteria in the statutory definition. The carrier should also file information supporting its explanation, for example, the number of lines the carrier serves, and state whether it is certified as a rural carrier in its state. All self-certifications will be subject to random verifications of the information provided at any time.

By June 30 of each year, the Commission will acknowledge receipt of the carrier's self-certification as a rural carrier. The Commission will also send the list of carriers certified as rural telephone companies to the Universal Service Administrator by July 31st of each year. If a carrier's status changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Universal Service Administrator within one month of the change in status.

The notifications of self-certification as a rural telephone company must be sent by April 30
of each year to the Sheryl Todd, Universal Service Branch, Accounting and Audits Division
Federal Communications Commission, 2100 M. St, N.W., 8th Floor, Washington, D.C.
-20554; 202/418-7386.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE May 20, 1998

In Re: Universal Service Proceeding) Docket No. 97-00888

STATEMENT OF DIRECTOR MALONE ON ORDER ADDRESSING PHASE I UNIVERSAL SERVICE SUPPORT MECHANISM ISSUES IN TENNESSEE

The Tennessee Regulatory Authority ("TRA") has long recognized the importance of establishing and ensuring affordable state-wide telephone service. These on-going "Universal Service" efforts recognize that affordably priced high quality basic telecommunications services must be preserved in promoting the general welfare, health, safety, and economic development of Tennessee's citizenry. Although a new regulatory paradigm is developing in Tennessee, and indeed the nation, our decisions here recognize and work in concert with this newly emerging environment.

Technological advances in telecommunications, particularly in the areas of digital switching and fiber technology, have resulted in a revived assessment of the public switched network, with emphasis on varying aspects of the network that can now be technologically exploited to allow competition in a previously monopoly environment. To ensure that technology and emerging competition do not outpace universal service concerns, the Tennessee General Assembly enacted § 65-5-207, which provides in part as follows:

(a) Universal service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.

As demonstrated in the above-quoted statute, the General Assembly directed the TRA to take appropriate steps to ensure that "residential basic local exchange telephone service at affordable rates" be maintained "after the local telecommunications markets are opened to competition."

Our decisions addressing Phase I Universal Service Support Mechanism Issues further the state's public policy goals and continue to make available statutory services regardless of region, age, income, disability, or regulatory environment.

Structuring a universal service paradigm in today's environment is a formidable and challenging task. We have taken the first step and will remain ever vigilant in facing today's as well as tomorrow's universal service concerns.

DIRECTOR MELVIN J. MALONE

ATTEST:

K. David Waddell, Executive Secretary